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SUMMARY OF HEARINGS HELD BY THE SENATE JUDICIARY SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY, JULY 1981-APRIL 1982

PREPARED FOR THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., February 17, 1983.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On January 27, 1981, the Immigration and Refugee Policy Subcommittee of the Senate Committee on the Judiciary was organized with a mandate to review and prepare legislative proposals with respect to U.S. immigration and refugee policy in general, and the Immigration and Nationality Act in particular.

On March 1, 1981, the Select Commission on Immigration and Refugee Policy which had been established in late 1978 "to study and evaluate . . . existing laws, policies and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate," made its final report and recommendations to the Congress.

Using the Select Commission's recommendations as a guide, the Subcommittee on Immigration and Refugee Policy held 22 hearings covering the full spectrum of immigration matters: asylum adjudication, illegal aliens, employer sanctions, verification of employment eligibility, refugees, temporary workers, and nonimmigrant visas. Each of these matters was addressed in a separate hearing. More than 300 witnesses testified during the 200 hours of hearings which were the most extensive held on immigration issues in the past 30 years.

The hearings permitted the Congress to obtain the benefit of the work and experience of the best scholars, practitioners, and government officials, both present and past. The testimony presented at the hearings played a major part in the formation of the Immigration Reform and Control Act of 1982. The record of the hearings has been published in individual volumes available to all interested parties.

However, the volume and detail of the record of those hearings has created a certain difficulty of access. Therefore, I requested the Congressional Research Service of the Library of Congress to prepare an objective summary of the record of each hearing to permit persons to get a profile of the hearings. That report, entitled "Summary of Hearings Held by the Senate Judiciary Subcommittee on Immigration and Refugee Policy, July 1981–April 1982" is now available, and I feel it will add to the understanding of the committee and the public on the immigration and refugee policy issues confronting the committee in this session of Congress. I recommend and request that the report be published as a committee print.

Most sincerely,

ALAN K. SIMPSON,
Chairman,
Subcommittee on Immigration and Refugee Policy.

LETTER OF SUBMITTAL

Congressional Research Service,
The Library of Congress,
Washington, D.C., January 26, 1983.

Hon. Alan K. Simpson,
Chairman, Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: I am pleased to submit the accompanying report, entitled "Summary of Hearings Held by the Senate Judiciary Subcommittee on Immigration and Refugee Policy, July 1981-April 1982," which was prepared at your request by the Congressional Research Service. It was written by Sharon Masanz and Joyce Vialet of the Education and Public Welfare Division.

We hope that this report will be useful to the Committee on the Judiciary and other Members of Congress in their continuing deliberations on the complex and important legislative issues of immigration reform.

Sincerely,

Gilbert Gude, *Director.*

Enclosure.

FOREWORD

During the 97th Congress, the Subcommittee on Immigration and Refugee Policy, chaired by Senator Alan Simpson, conducted an extensive series of hearings on U.S. immigration policy and proposals for reform. Following these hearings, the subcommittee developed comprehensive legislation designed to deal with the Nation's immigration problems. This initiative, the Immigration Reform and Control Act, was subsequently approved by the full Judiciary Committee, as well as the U.S. Senate. Unfortunately, the House of Representatives failed to consider similar legislation in the waning days of the Congress.

It is clear that the immigration issue is rapidly becoming one of the most important and controversial areas of public debate. This fact was reflected clearly in the congressional debate that accompanied last year's measure. An extremely wide variety of individuals and organizations focused their attentions on the act, including business and labor organizations, civil rights and civil liberties groups, Hispanic organizations, public interest organizations, and so forth.

In an effort to summarize the hearings of the subcommittee, and to make this summary permanently available, the Judiciary Committee has chosen to publish a committee print of an analysis prepared by the Congressional Research Service entitled "Summary of Hearings Held by the Senate Judiciary Subcommittee on Immigration and Refugee Policy, July 1981–April 1982." I am convinced that this print will serve as an important document for anyone who cares to seriously explore the difficult issues relating to immigration that have so capably been considered by Senator Simpson and his subcommittee.

Strom Thurmond,
Chairman, Committee on the Judiciary.

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SUMMARY OF HEARINGS HELD BY THE SENATE JUDICIARY SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY, JULY 1981-APRIL 1982

OVERVIEW

I. INTRODUCTION AND BACKGROUND

The Senate Judiciary Subcommittee on Immigration and Refugee Policy conducted an extensive and comprehensive series of hearings on various aspects of immigration and refugee law, policy, and administrative procedures during the First Session of the 97th Congress continuing into the opening months of the Second Session. The hearings culminated in the introduction of S. 2222, the Immigration Reform and Control Act, by the Subcommittee Chairman, Senator Alan K. Simpson, on March 17, 1982.

The Senate hearings were part of an effort to revise and reform the immigration law which began with the work of the Select Commission on Immigration and Refugee Policy. The Select Commission, created by legislation enacted in 1978 by the 95th Congress (P.L. 95-412), conducted a study of immigration and refugee laws, policies, and procedures, and reported to the President and the Congress on its findings and recommendations in a Final Report entitled "U.S. Immigration Policy and the National Interest," dated March 1, 1981. The 16-member Commission was chaired by the Reverend Theodore M. Hesburgh and included among its members Senator Alan Simpson, who subsequently became the Chairman of the Subcommittee on Immigration and Refugee Policy, and the Subcommittee's two minority members, Senator Edward M. Kennedy and Senator Dennis DeConcini. The fourth Senate member was Senator Charles McC. Mathias, a member of the full Senate Judiciary Committee.

The basic conclusion of the Select Commission was that immigration has been and continues to be in the national interest. At the same time, the Commission stressed the need to improve the enforcement of immigration law and to "regain control of our immigration policy through employer sanctions and legalization." In Chairman Hesburgh's words, the Commission recommended "closing the back door to undocumented illegal immigration, and opening the front door a little more to accommodate legal migration in the interests of the country."

Joint hearings were held on the report and recommendations of the Select Commission on Immigration and Refugee Policy on May 5, 6, and 7, 1981, by the Senate Judiciary Subcommittee on Immigration and Refugee Policy and the House Judiciary Subcommittee on Immigration, Refugees, and International Law, under the chairmanship of Senator Simpson and Representative Romano Mazzoli. These were the first joint congressional hearings since 1951, when both houses were under Democratic control. Senator Simpson's opening statement emphasized "the necessity for a bipartisan revision of our nation's immigration and refugee policy," and expressed the hope that the joint hearings would facilitate "the development and enactment of the legislative reforms which are so vitally needed in this area."

The Reagan Administration responded to the Select Commission's Final Report by creating a Cabinet-level Interagency Task Force on Immigration and Refugee Policy, chaired by Attorney General William French Smith, to review the Commission's findings and the issues. Its work formed the basis for the Administration's proposals for immigration and refugee policy reform announced by the President and presented by the Attorney General at a joint hearing of the Senate and House Judiciary immigration subcommittees on July 30, 1981.

The following synopsis of the Senate hearings begins with this July 30 joint hearing and concludes with the joint hearings on S. 2222 and H.R. 5872, the identical House bill, on April 1 and 20, 1982. The Reagan Administration's proposals and the legislation to implement them introduced on October 22, 1981 (S. 1765/H.R. 4832), are a connecting link in the first 14 hearings summarized in the following pages. However, the scope of the hearings extends far beyond these proposals to include the basic issues, the Select Commission's proposals regarding these issues, and the proposals of the various witnesses testifying before the Subcommittee.

The focus of the hearings, as frequently noted by Senator Alan Simpson, was on the need for maintaining or regaining control of the various forms of immigration. The hearings addressed five basic aspects of immigration: (1) legal permanent immigration, the subject of two days of hearings; (2) refugee admission and resettlement, considered in two hearings; (3) mass asylum and the related issues of adjudication, considered in three hearings; (4) illegal immigration, including work authorization, legalization, and temporary worker programs, considered in four hearings; and (5) nonimmigrants, the subject of two hearings. The main arguments and issues considered during the hearings on each of these subjects and on the Immigration Reform and Control Act are discussed briefly below, followed by a summary of the individual hearings.

II. LIMITING ANNUAL LEGAL ENTRIES

Two hearings, the November 23, 1981, "The Preference System" and the January 25, 1982, "Numerical Limits on Immigration to the United States" addressed the issue of numerical limits on legal entries to the United States and what categories of persons should be admitted to the United States within the limits. The following is a brief summary of the major arguments presented on these topics during the hearings.

A. Overall numerical limits

Immigration to the United States is currently numerically restricted to 270,000 persons a year, exclusive of refugees. There are, however, several categories of immigrants which are exempt from numerical restrictions, primarily immediate relatives of U.S. citizens. Under this worldwide ceiling, each country is limited to an annual maximum of 20,000 immigrant visas; territories and possessions of independent countries are limited to 600 immigrant visas annually. The visas are distributed according to six-category preference system which gives priority to family members and those with needed skills.

It was emphasized throughout the hearings that the total annual number of persons entering the United States for permanent residence includes refugees, asylees, and some illegal (or undocumented) entries as well as those admitted as immigrants. It was suggested by some that an overall cap encompassing all legal entries for permanent residence (including refugees and the present exempt family members) be established in lieu of the present numerical restrictions on some immigrant entries. The Administration proposed that the existing laws regarding overall numbers remain unchanged but that the annual limit on visas for Canada and Mexico be increased to 40,000 each, raising the total annual ceiling to 310,000. Those who testified for the Administration opposed an overall cap on legal immigration and emphasized the need for flexibility in emergency situations.

Some public interest groups favored a cap on legal entries; others favored the concept of a cap for immigrants, but felt refugees and/or family members should be exempted, reflecting U.S. humanitarian concerns. The limits for legal entries proposed ranged from a gross of 300,000 to one-half million entries annually. Those supporting the cap stressed that the total entries, rather than only those entries currently regulated by numbers, impact on the United States.

In the debate over whether there is a need to establish numerical limits on legal entries to the United States, a variety of factors was considered, including the economic effect of foreign entries; foreign policy and humanitarian concerns; and the best interest of the United States in terms of such things as social impact and use of limited natural resources. Those in favor of establishing numerical limits included some public interest groups who said that new entrants have economic impacts on the United States and that indexing immigration to economic variables would minimize adverse developments. However, scholars who testified on the possibility of such indexing disagreed on the magnitude of the immigrant's effects on the variables and on whether such indexing would be useful. It was generally agreed that it is difficult to forecast the future and that technological and other unforeseeable changes can alter projected needs. In this vein, the possible impact of new entrants on the labor market was of particular interest. Although some public interest groups and scholars suggested that immigrants adversely affect U.S. workers, other immigration groups and scholars questioned whether foreign entries have a negative impact on the U.S. labor force. The Administration testified that U.S. unemployment rates are too crude and unreliable to be used for setting immigration limits and that new workers entering the labor force are generally of little consequence.

Arguments for and against an overall cap also focused on the world situation. Several public interest and environmental groups favored limiting the overall number of entries to the United States and pointed out that the United States cannot accept all those who wish to come here. To support this argument, they described the growing world population and world-wide problems of hunger, unemployment, etc., which serve as "push" factors from many foreign countries. Those groups opposed to the limits pointed to a variety of U.S. policies and historical precedents such as the humanitarian and foreign policy considerations that affect the admission of refugees, that would make overall limits problematic.

Humanitarian concerns were also cited as reason to continue the current numerically unrestricted admission of close family members rather than including them within an overall ceiling. The Administration testified that using an overall ceiling and adjusting immigration levels based on varied refugee conditions would cause administrative burdens and personal hardships because the admission of immigrants would then be subject to unforeseeable delays.

Finally, concerns over what is best for the United States were discussed with regard to whether an increased population would deplete natural resources and whether entering immigrants cause social unrest by failure to assimilate. It was suggested by public interest groups concerned with the environment and population that natural resources are finite and that more people would deplete them more quickly. This was countered by groups concerned with immigrants and ethnic groups who argued that human ingenuity and endeavor are renewable resources and that reducing immigration could reduce that resource. One public interest group expressed concern about recent immigrants' failure to assimilate into U.S. society and cited various factors that inhibit assimilation. Particular concern was expressed regarding the continued use of native language. Factors that work against linguistic assimilation of ethnic groups today were cited, including bilingual and bicultural education programs, a greater concentration of entries of a single language group, higher tolerance of ethnic diversity, and the proximity of Latin American countries which encourages continual contact. This concern was countered by arguments that past racial and religious sentiments of earlier waves of immigrants have been unified by use of the English language and now concern has shifted to the linguistic minorities in the United States. It was argued that those factors which inhibit acquisition of English must be balanced against incentives to acquire English, including the need for English in the work force and for upward mobility.

B. Admission categories

The focus of the concern regarding what immigrant admission categories should exist and what preference should be given each was summarized by Senator Simpson when he opened the November 23 hearing on the preference system by pointing out that currently less than 5 percent of new U.S. permanent residents have been admitted for individual qualities that promote the national interest. At issue are whether those who can contribute special skills of benefit to the United States should be given greater preference for admission than presently and whether those entering should be able to demonstrate (perhaps as measured by a point system) that they have specific skills such as education and English language training that would increase their opportunity for success in the

United States. Also of concern is whether family reunification is a primary goal and should extend, as currently, to the fifth preference—brothers and sisters of adult U.S. citizens.

Several labor and trade organizations favored increasing the percentage of immigrant admissions based on skills. They pointed out that raising the number of admissions under third or sixth preference (employment preferences) could benefit American business, and that current time delays in admitting foreign workers pose major problems for American business, e.g., when transferring needed specialist and professional personnel from abroad. Some scholars argued that few immigrants are skill tested and that we are thus not necessarily admitting the most productive people. They also said that there is evidence that those who enter under the occupational preferences do better in the labor market than other admissions. There were also criticisms of the DOL's labor certification procedures and assertions that as the system currently operates, most persons "admitted" to the United States under third and sixth preference are already in the United States on temporary visas.

Some public interest groups opposed increasing labor admissions by questioning whether foreign professionals affect the U.S. labor market. They pointed to possible harmful technology transfers when foreign workers return to their home countries and argued that encouraging talented and skilled people to come to the United States risks loss of the best peopole from underdeveloped countries. Several scholars argued that there is not firm evidence on how immigrants fare once they are in the United States or on how they affect the U.S. labor force. The Administration did not support increasing the percentage of immigrants screened for labor market impact or using additional selection criteria for prospective immigrants seeking admission.

Those groups favoring eliminating the fifth preference admission category were generally pro-labor. They emphasized that the U.S. immigration system is too heavily weighted in favor of family reunification. They argued that immigration is now based on kinship ties with too little concern for the economic impact of immigration. Others expressed concern that the fifth preference category acts as a multiplier, allowing the entry of extended families who then bring in their families and contribute to backlogs of applicants in family reunification categories. One scholar pointed out that studies indicate that fewer fifth preference category immigrants naturalize than do immigrants admitted under other categories. He also pointed out that immigrants leave their home countries voluntarily and family breakup is thus not a consequence of U.S. policy.

Those organizations supporting ethnic groups pointed out that brothers and sisters are an integral part of some ethnic groups' families and elimination of this preference curtails family reunification. It was also suggested that long waits for family reunification acts as a stimulus to illegal immigration.

III. REFUGEES

Two hearings, the September 22, 1981, "Annual Refugee Consultation for 1982," and the February 9, 1982, "Proposed Regulation

Changes for Refugee Resettlement" focused on refugee admissions and resettlement in the United States. Major concerns included how many refugees should be admitted annually and how the numbers are allocated; and refugee resettlement policies. Although there was some discussion of the definition of "refugee," this was considered at greater length during the July 31, 1981, hearing on mass first asylum. The following is a summary of the major arguments presented regarding refugee concerns during the hearings.

A. Refugee admissions

The September 22 hearing was part of the annual consultation on refugee admissions between the Executive Branch and Congress required by the Refugee Act of 1980. In opening the hearing, Senator Simpson indicated that refugees are an international problem requiring international solutions. Since the United States cannot accept for permanent resettlement all who flee their countries, he argued for placing the United States' system in a broader international context.

The Administration proposed the admission of 173,000 refugees for resettlement in fiscal year 1982, as follows: Soviet Union—33,000; Eastern Europe—9,500; Latin America—2,000; Africa—3,000; Near East—5,500; Asia—120,000. Administration spokesmen indicated that the current admission program includes alternative means of resettling refugees before they are admitted to the United States, including voluntary repatriation of refugees to their country of origin and various forms of resettlement in countries other than the United States. According to the Administration, factors affecting the decision on the number to admit to the United States included foreign policy objectives, domestic impact, and humanitarian concerns.

The Administration was questioned on the low levels of admissions proposed for Africa and for the Western Hemisphere. The proposed numbers were defended on the basis that many neighboring countries provide asylum and that in the Western Hemisphere, some people are fleeing for economic rather than political reasons.

Several voluntary agencies, including the American Council of Voluntary Agencies and Church World Service of the National Council of Churches, indicated that they believe the government should not reduce the number of refugees admitted to the United States and that broader regional definitions should be used for refugee admissions levels so that those from many areas of the world currently omitted would be eligible to apply. Amnesty International expressed concern that refugees from all countries be treated fairly and that refugee admissions not be based on political expediency. Other groups, such as the U.S. Catholic Conference, supported repatriation and other alternative means of assisting refugees in lieu of admission when possible. The Federation for American Immigration Reform (FAIR) stated that the number of refugees admitted to the United States is too high.

The Intergovernmental Committee on Migration suggested that refugee assistance and placements could be better coordinated within the international community, benefiting all involved. Amnesty International suggested the use of a refugee review board composed of U.S. governmental departments and members of the international community, including the U.N. High Commission on Refugees, to make refugee admission decisions.

B. Refugee resettlement

During the February 9 hearing, the Administration outlined proposed changes to current regulations on Federal reimbursement to States for refugee cash and medical assistance. The Administration proposed changing the existing program of 36-months of full Federal reimbursement for refugee cash and medical assistance to 18-months of full reimbursement and 18 months of reimbursement based on what a U.S. citizen would receive. Discussion of the proposed changes focused on the Federal role in refugee resettlement and how States have been affected by refugee policies; and on how successful Federal refugee assistance has been in making refugees self sufficient.

1. *Federal role and effect on States.*—Those testifying for Florida, Oregon, Wisconsin, Washington, and California indicated that they believe refugees are a Federal responsibility and that the refugees impact socially and economically on the States. They cited State financial problems and high unemployment rates as factors contributing to the need for full Federal reimbursement for cash and medical assistance for 3 years. They said that in some cases, the problem of resettling refugees has been exacerbated by the concentrations of refugees in relatively few geographic locales and by the lack of consultation by the Federal Government with the States regarding States' needs and possible options for resettlement assistance. Many States indicated that the proposed reduction of assistance would be a burden on State and local governments and would retard refugees' ability to become self sufficient.

Several public interest groups, including the Council of Vietnamese Asssociations in the Greater Washington Metropolitan Area and the American Council for Nationalities Service pointed out that in admitting refugees, the United States makes a commitment to help them achieve self-sufficiency as soon as possible without undue strain on communities and suggested that the proposed changes would be a hardship for State and local governments and individual refugees.

The Administration indicated that efforts are underway to achieve a more equitable distribution of refugees throughout the States and to decrease refugee dependency rates. The Administration cited cost savings as a major incentive for the proposed changes. An Administration spokesman said that the dependency level of refugees has increased recently and that refugees had "begun to regard the 36-month Federal reimbursement as an entitlement." The Administration spokesman indicated that it is difficult to assess how the States will be affected by the proposed changes, but that he couldn't point to any specific costs that were being transferred to the States.

2. *Refugee dependency rates.*—The Administration pointed to increasing dependency levels among refugees, reaching 67 percent in August 1981, and suggested that this was due, in part, to their perception that they would receive a full 36 months of benefits and need not seek employment until the end of that period. An Admin-

istration spokesman said he believes "the word is out" now that the refugee dependency rate must be reduced.

Senator Hatfield, as well as those testifying from social service agencies in several States, suggested that there might be other reasons for the increasing dependency rates, such as the time required by recent pre-literate refugee entries to gain self sufficiency compared to other, comparatively well-educated, entries.

Representatives from several States suggested that the dependency rate is also affected by the fact that many refugees are being sponsored by other refugees on public assistance, and that States' unemployment rates are high; they also suggested that concentrations of many refugees in a few geographic areas reduced the ability of communities to absorb and assist them. The States' representatives said they believe the evidence suggests that most refugees do become self-sufficient after 36 months.

Voluntary agencies at both this hearing and the September 22 hearing argued that dependent families are not allowed to sponsor refugees. They said that the voluntary agencies attempt to make refugees self-sufficient as soon as possible. They pointed out that it is difficult to focus refugees simultaneously on education and job training and on employment. They emphasized that they would like to have control of their cases. They indicated that if they had case control, they would be better able to determine who should be getting public assistance and there would be fewer refugees on welfare. They indicated that they are currently not notified as required by law in all cases when an alien goes on public assistance.

IV. MASS ASYLUM

Three hearings, the July 31, 1981, "U.S. As A Country of Mass First Asylum," the October 14, 1981, "Asylum Adjudication," and the October 16, 1981, "Adjudication Procedure," addressed U.S. asylum policy and processes. Of major concern were what should be the definition of asylum, the impact of mass alien entries claiming asylum, and asylum adjudication procedures. Although the future status of the Cuban/Haitian Entrants was addressed as part of the Administration's immigration proposals, it was not a major focus of discussion. The following is a summary of the major arguments presented during the hearings on the three major areas of concern.

A. Definition of asylum

The current definition of who is entitled to asylum is contained in the Immigration and Naturalization Act, as amended by the Refugee Act of 1980 (8 U.S.C. 1101) and is synonymous with that of refugee, as follows:

> The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of a persecution on account of race, religion, nationality, mem-

> bership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultatiion (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

Asylum determinations are made on a case-by-case basis.

The Administration and several public interest and legal groups, such as the Lawyers Committee for International Human Rights and the National Law Center at George Washington University indicated that they believe the current definitions are adequate. Others, such as Senator Huddleston, suggested that the definitions are adequate if the language is modified to state that certain conditions had to exist in the home country prior to the person's exit from the country. Congresswoman Chisholm emphasized that the definition of persecution should not allow the United States to be selective about human rights concerns.

B. Impact of mass alien entries claiming asylum

The Administration pointed out that the number of asylum applicants has risen dramatically in the past 2 years. Senator Simpson listed at the July 31 hearing the major problems this country faces as a result of mass asylum entries, including the costs incurred by Federal, State, and local governments and voluntary agencies and individuals to house, process, and resettle the entries. Members of the July 31 Senatorial panel and Representatives McClory and Chisholm addressed the impact of mass entries on the States and local governments and what should be the role of the Federal Government. There was general agreement that these entries are national problems and require national solutions. Senators Hawkins and Chiles cited the problems, such as social tensions, health hazards, and increased crime in Florida resulting from the mass entries. There was discussion of the concentration of the Cubans and Haitians in a few geographic areas, particularly in Florida, and means of deterring the entries, including the Administration's interdiction program and means to assure that we discourage future waves of mass illegal entries. Alternatives to interdiction were suggested. Representatives from voluntary agencies and local governments discussed the impact on communities when mass entries are resettled there pending the determination of their status. There was general agreement that community responses may vary but that the questionable legal status of the entries makes sponsorship more difficult and that some geographic areas have been overloaded. The representative from the National Association of Counties pointed out that a backlash can come when services are available for aliens that are not available for U.S. citizens. The voluntary agencies suggested that sponsors should have more back-up support and that new resettlement models should be developed.

C. Asylum adjudication procedures

Both the October 14 and 16 hearings addressed asylum adjudication procedures. Senator Simpson said at the October 14 hearing that the number of people claiming asylum is impeding adjudications and that revised asylum laws should result in clear policies and procedures that will allow speedy determinations and distinguish between frivolous and legitimate asylum claims. The Administration testified on the large backlog of asylum applications and its proposal to streamline asylum and exclusion procedures and eliminate administrative and judicial review in asylum cases. Doris Meissner, then Acting Commissioner of the Immigration and Naturalization Service (INS), characterized the proposed process as similar to that of consular officers processing refugees abroad. The Administration also proposed making immigration judges independent of INS within the Department of Justice (DOJ), accountable directly to the Attorney General.

Some of the Administration's proposals were supported by several members of the October 14 lawyers panel and scholars panel. However, other members of these panels challenged the wisdom of eliminating judicial review for asylum cases and suggested that the slowness of asylum procedures occurs in INS and the Department of State (DOS) rather than at the appellate level. Suggestions to improve operations within INS and DOS were made, including eliminating duplicative processes, providing additional funding and staff for INS, and using techniques such as random examinations. Several suggestions were made to improve existing asylum procedures, including review of asylum decisions by an independent board, involvement of the international community in asylum decisions, and use of country profiles prepared by an organization other than the DOS when making decisions about conditions in an applicant's country.

Several members of the lawyers and judges panel on October 16 testified in support of statutory creation of procedures that provide for the independence of immigration judges, apart from the law enforcement side of INS. However, the need for internal management improvements in INS was stressed. Some members of the October 16 judges panel suggested alternative arrangements to streamline adjudications, including placing immigration judges in an independent body outside the DOJ and suggested that there should be an appeal level after decisions have been made by the immigration judges. They indicated that the judges are susceptible to arguments that they are accountable to one party of the legal action (INS) and thus cannot be impartial.

V. CONTROL OF ILLEGAL IMMIGRATION

Four hearings focused on the control of illegal immigration. These were all in 1981, on September 30, "Employer Sanctions"; October 1, "Systems to Verify Authorization to Work in the United

States"; October 22, "Temporary Workers"; and October 29, "Legalization." Senator Simpson indicated several times that he believed in a three-pronged effort, consisting of employer sanctions, a secure worker identifier, and increased border and interior enforcement, as the most workable means for reducing illegal migration. He characterized this as a "three-legged stool," implying that all three steps were necessary.

The Administration also stressed the package aspect of its proposals which included employer sanctions and increased enforcement, but specifically did not include a new worker identifier. The Administration also proposed a legalization program, supported in principle by Senator Simpson; and a new pilot Mexican temporary worker program, which proved to be highly controversial.

The following is a summary of the major issues and arguments during the hearings on the control of illegal immigration.

A. Employer sanctions and worker authorization

The establishment of penalties for employers who knowingly hire aliens not legally authorized to work in the United States continued to be the major proposal for the control of illegal immigration, as it had been during the 1970s. This approach was favored by the Select Commission on Immigration and Refugee Policy, Senator Simpson, Administration officials, labor representatives including the AFL-CIO, and a number of other witnesses, on the grounds that employer sanctions would sharply curtail the availability of the jobs which are the principal reason aliens come here illegally.

Employer sanctions were opposed by, among others, Senator Harrison Schmitt, who argued that they wouldn't stop illegal immigration and would cause economic chaos among small businesses. Civil rights groups and Hispanic organizations either opposed or seriously questioned employer sanctions, primarily because of concern that they would lead to discrimination against ethnic minorities. These included the U.S. Civil Rights Commission, the League of United Latin American Citizens (LULAC), and the Mexican American Legal Defense and Education Fund (MALDEF).

Among supporters of employer sanctions, there was criticism of those proposed by the Administration as being too weak. The administration proposed civil penalties ranging from $500 to $1,000 per violation for knowingly hiring illegal aliens, and injunctive relief in the case of a finding of a pattern or practice of such hiring. Labor witnesses, former Select Commission Staff Director Larry Fuchs, and Vernon Briggs from Cornell, among others, argued these penalties were too low and proposed higher fines and/or criminal penalties in order for them to be taken seriously by employers and the courts.

The issue of the identification to be required from workers in connection with employer sanctions was a matter of considerable controversy and the subject of a separate hearing. A number of business witnesses predicated their acceptance, if not support, of employer sanctions on the development of reliable identification which could be requested of all workers and would provide employers a defense against liability. Considerable concern was also expressed about the importance of an "ethnically neutral" system of identification to protect against possible employer discrimination.

No new or modified form of identification was proposed by the Administration, which specifically opposed the development of anything resembling a national identity card. Administration witnesses said that the development of more secure identification was also rejected on the grounds of the cost and time required for implementation, as well as by a desire to test the simplest way first.

As they had with employer sanctions, civil rights and Hispanic representatives either opposed or took a dim view of the development of more secure identification as a potential invasion of privacy which offered inadequate protection against discrimination. Others, including former Select Commission Staff Director Larry Fuchs, argued that the benefits of such a system outweighed the costs on virtually all grounds. Former Secretary of Labor and Select Commission member Ray Marshall made a similar point, and recommended adoption of the data bank system developed by the Department of Labor for the Select Commission.

Those who opposed employer sanctions generally proposed as an alternative some combination of the recommendations of the U.S. Civil Rights Commission presented by its Chairman, Arthur Flemming: (1) vigorous enforcement of the Fair Labor Standards Act and related laws; (2) additional resources for INS; and (3) negotiations and agreements with the major source countries. These proposals were criticized on the grounds that the majority of illegal aliens apparently are paid the minimum wage or above, and their employers are thus beyond the reach of labor law enforcement; and that employer sanctions were needed as an additional tool for effective interior enforcement of the immigration law.

B. Legalization

In addition to curtailing the future flow of illegal immigration, Senator Simpson stressed the need to deal with some portion of the millions of illegal aliens who are already here, in large part because of our historical ambivalence about enforcing immigration laws, and who are generally believed to be conscientious and productive. Senator Simpson emphasized the undesirability of the alternatives to legalization, mass roundups or the toleration of a large illegal underclass, a point which was subsequently underscored by Ambassador Diego Asencio, the Assistant Secretary of State for Consular Affairs, on foreign policy grounds.

Some form of legalization of status of some of the aliens illegally present in the United States was endorsed with varying degrees of enthusiasm by all of the witnesses testifying before the Subcommittee except the representative of the American Legion who opposed legalization as "unworkable, impractical and unjustifiable." Otherwise the hearing generally bore out Charles Keely's observation that the idea of amnesty for undocumented aliens has widespread support; "the issues are the timing and the scope of a regularizing program."

There were widespread divergences of opinion regarding the timing, scope, and other details of legalization, although there was general criticism of the specific proposals presented by the Administration witnesses. The Reagan Administration proposed that aliens who have been present in the United States prior to January 1, 1980, could apply for a temporary status renewable at 3-year intervals. After 10 years continuous residence, including time spent here before the program, these "renewable term temporary residents" could apply for permanent resident status if they were otherwise eligible. In the interim, they could work but they could not bring in family members or participate in most Federal benefit programs.

The 10-year residency period was questioned by Senators and witnesses alike as being too long, and the 3-year renewable term requirement was criticized as being administratively cumbersome. A number of witnesses suggested that the Administration's legalization program was in fact a large-scale temporary worker program, and Senator Walter Huddleston questioned the need for the small-scale temporary worker program also proposed by the Administration. Others argued that the program was too complicated and insufficiently beneficial to attract participants. Administration witnesses defended the 10-year residence requirement on the grounds that legalization should not be made too easy.

C. Temporary workers

Senator Simpson indicated that the issue of temporary workers was one of the most controversial facing them, with deep divisions between the employers' groups, which favored temporary workers; and organized labor, minority groups, and church organizations, which opposed them. This controversy was apparent in the two hearings on the pilot U.S.-Mexican temporary worker program proposed by the Administration as part of its package of illegal immigration control proposals, and the separate hearing on the existing H-2 temporary worker provision.

The Administration proposed a 2-year pilot temporary worker program for Mexican nationals under which up to 50,000 workers would be admitted annually for 9-12 months. The workers would be allocated among the States based on the determinations of need by State Governors, and would be allowed relatively free access to the labor market. Whereas the H-2 temporary worker program is geared to specific labor market needs, the pilot temporary worker program would be geared to the illegal immigration phenomenon. According to the Labor Department official, they were attempting to "make a small-scale legal substitute for Mexican illegal immigration." The minimally regulated program, together with the legalization program and the existing H-2 program, were also intended to cushion possible labor disruptions resulting from employer sanctions.

The proposed Mexican temporary worker program was criticized as being too small by Senator Harrison Schmitt and Senator S. I. Hayakawa, both of whom introduced legislation which would establish substantially larger Mexican guest worker programs. David Gregory of Dartmouth also criticized it as too small, but he identified as positive the fact that it focused on our bilateral interests with Mexico, a point that was implicit in the testimony of Senators Schmitt and Hayakawa.

The remaining witnesses were generally critical of the proposed new program. Employers indicated it would not meet their needs, and representatives of labor and ethnic groups were generally critical of temporary worker programs as displacing U.S. workers, particularly during a period of high unemployment. Witnesses also questioned the need for an additional program besides the H-2 program and the proposed legalization program. In general opposition to temporary worker programs, Philip Martin of the University of California and Mark Miller of the University of Delaware cited the European experience with guestworker programs as evidence that the workers tended not to return home.

VI. NONIMMIGRANTS

Two hearings focused on nonimmigrants categories and related issues of current interest. These were on November 30, 1981, "The H-2 Program and Nonimmigrants"; and on December 11, 1981, "Nonimmigrant Business Visas and Adjustment of Status." The nonimmigrant categories of specific concern were the H-2 temporary worker category, the F foreign student category, and the four business visa categories (B-1, E, H-1 and L). Related issues of concern were adjustment from nonimmigrant to immigrant status, the visa waiver program proposed by the Administration, and INS' nonimmigrant document control system.

The H-2 provision was of specific concern in the context of the Administration's proposed package for controlling illegal immigration, as discussed below. Beyond this, Senator Simpson noted that unless INS had adequate control, expanding the H-2 program, easing restrictions on foreign students, and waiving certain visa requirements may only aggravate illegal immigration. He also expressed concern about the possibility of abuse of the adjustment of status provision by aliens who come here as nonimmigrants with the intent of remaining permanently.

A. *H-2 temporary workers*

Under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, aliens may enter temporarily for work which is itself temporary in nature provided "unemployed persons capable of performing such services of labor cannot be found in this country." Section 214(c) provides that the final determination regarding the admission of H-2 workers, as they are popularly referred to, rests with the Attorney General "after consultation with appropriate agencies of the Government, upon petition of the importing employer." A procedure for Justice Department consultation with the Department of Labor is prescribed by the INS regulations. The Labor Department, in turn, has issued two sets of regulations for non-agricultural and agricultural H-2 certification, the latter being considerably more detailed.

The operation of the H-2 program was summarized in some detail by the Labor Department representative. He said that 18,371 farm workers were certified in 1980, and nearly 25,000 non-agricultural workers were certified, more than half of them in entertainment, engineering, sports, and construction. He said further that, althought small, the H-2 program is controversial because it "mandates the balancing of conflicting goals of assuring employers of short-term workers of an adequate labor force on the one hand, and protecting the jobs of citizens on the other." This controversy was evident throughout the hearing, particularly regarding the agricultural segment of the program, according to some witnesses because the Labor Department's regulations were so detailed and agriculture's needs were so time-critical.

In general, employers and some lawyers criticized the Labor Department regulations governing the agricultural segment of the program as being unrealistic and burdensome. Senator John Warner focused specifically on the adverse effect wage rate, which would be eliminated under legislation he introduced. One witness noted that virtually no grower groups had been able to enter the H-2 program recently without suing first.

Labor groups and other lawyers, on the other hand, criticized the H-2 agricultural program as displacing and adversely affecting U.S. workers, as creating a subclass, and as generally favoring the needs of employers, particularly agribusiness. A number of witnesses favored repealing the program or modifying it to increase protections for domestic workers.

Concern was expressed about the large although unknown number of illegal aliens in the migrant labor force, and the potential for a shortfall following enactment of employer sanctions. The importance of the H-2 program in the context of controlling illegal immigration was stressed by Administration witnesses, particularly Department of Agriculture representatives, as well as by a number of witnesses including Governor William Clements of Texas. Governor Clements recommended continuation of the H-2 program in addition to the pilot temporary workers program proposed by the Administration, and transferral of the H-2 program's administration from the Department of Labor to the Department of Agriculture.

B. Other nonimmigrant issues

State Department witnesses supported a visa waiver provision for certain countries which have a less than 2 percent visa refusal rate, arguing that this would facilitate international travel, benefit foreign relations, and conserve consular resources for areas where they were more needed. INS indicated that its automated nonimmigrant document control system would be in full operation in time to provide support for such a program.

There was discussion about the provision in current law, section 245, which allows nonimmigrants to adjust to permanent resident or immigrant status without leaving the United States. The majority of such adjustments are by B visitors for business or pleasure, and F students, and 85 percent of such adjustments are on the basis of family relationship. Administration witnesses supported adjustment of status generally on the grounds that the alternatives, which have been tried in the past, are less desirable. Immigration lawyers testifying before the Subcommittee argued that adjustment of status did not constitute an end run around the system, since applicants for adjustment have to meet all the substantive requirements for immigrant status that aliens applying for immigrant visas abroad do.

Regarding F foreign students, Administration and other witnesses generally concurred that it was strongly in the United States' interest to continue to have them here, culturally, economically, and as a matter of foreign policy. It was generally agreed that better information needed to be maintained on foreign students and that schools should play a greater reporting role. An INS official indicated that it was their perception that much of the abuse was traceable to certain schools and recruiters, and that a one-time recertification of schools followed by ongoing monitoring was planned.

Administration and other witnesses generally recommended against reducing the number of business-related nonimmigrant visa categories on the grounds that there were administrative advantages to maintaining existing distinctions. The four categories are B-1 visitors for business, E-1 and E-2 treaty traders and investors, H-1 persons of distinguished merit and ability, and L intracompany transferees. Witnesses criticized the delays involved in issuing business visas, particularly in the L category. Several witnesses recommended allowing reputable companies to handle their own L-1 visa programs, similar to the current arrangement for J-1 exchange visitor programs. They also recommended allowing long-term nonimmigrant visas.

VII. IMMIGRATION REFORM AND CONTROL ACT OF 1982

Two joint hearings were held on the proposed Immigration Reform and Control Act of 1982, S. 2222/H.R. 5872. The companion bills were introduced on March 17, 1982 by Sen. Alan Simpson and Congressman Romano Mazzoli, the chairmen of the Senate Judiciary Subcommittee on Immigration and Refugee Policy and the House Judiciary Subcommittee on Immigration, Refugees, and International Law. Testifying on behalf of the Reagan Administration, Attorney General William French Smith characterized the bill as "a rational and comprehensive set of reforms in the finest bipartisan tradition of the U.S. Congress."

Comments on the overall legislation were generally favorable, with criticisms reserved for specific provisions. The following discussion is organized around six specific areas which generally follow the outline of the bill. In each case, a brief statement of the provision in question is followed by a general summary of testimony for and against the provision.

A. Employer sanctions

As introduced, the Simpson-Mazzoli bill prohibited the knowing hiring, recruitment, or referral for employment of aliens unauthorized to accept employment in the U.S., and established a graduated series of penalties for violation, culminating in a criminal penalty for a third offense. It also prescribed requirements for worker identification and verification, relying on existing documents for the first three years after enactment during which time the President would be required to "develop and implement a secure system to determine employment eligibility."

Administration officials expressed the opinion that the employer sanctions provisions were the cornerstone of the Simpson-Mazzoli bill, as they had been of the Administration bill. The employer sanctions provisions were strongly supported by a wide range of witnesses appearing before the joint hearings, including two former U.S. Attorneys General, Benjamin Civiletti and Elliott Richardson;

Lane Kirkland, President of the AFL-CIO; Father Theodore Hesburgh, former Chairman of the Select Commission on Immigration and Refugee Policy; and representatives of the National Association for the Advancement of Colored People (NAACP), National Association of Counties (NACo), and the Federation for American Immigration Reform (FAIR).

A number of witnesses, including the Attornery General, Lane Kirkland, and Father Hesburgh, indicated that they believed there was no alternative means of controlling illegal immigration. The need for such control was stressed by, among others, representatives of the AFL-CIO, NAACP, and the U.S. Department of Labor on the grounds of the need to improve employment opportunities for the low-skilled who are most vulnerable to competition from undocumented workers.

Witnesses opposing employer sanctions included representatives of Hispanic organizations, the U.S. Chamber of Commerce, and the American Civil Liberties Union (ACLU). Opposition was generally based on the concern that employer sanctions would result in discrimination against those who looked foreign, or that U.S. businessmen would be required to enforce the immigration law.

The identification issue was the most widely discussed aspect of employer sanctions during the hearings. It was generally agreed among supporters of sanctions that a uniformly required identification system was a necessary accompaniment to employer sanctions, and would neutralize the risk of discrimination. Several witnesses, including Father Hesburgh and Lane Kirkland, characterized the status quo as more discriminatory. Some witnesses, including the ACLU, opposed a universal identification system on the grounds of civil rights concerns, and a number of witnesses urged the adoption of the appropriate safeguards to insure against abuse. Some witnesses questioned the feasibility of a secure, universal identification system. The Administration urged that as an alternative to developing a secure employment eligibility system within three years of enactment, they be required to evaluate use of the existing identifiers and report on the need and possibilities for improvements. The also opposed penalties for the failure to comply with the verification requirement.

A number of witnesses testifying in general support of employer sanctions suggested specific changes in the Simpson-Mazzoli provisions. The Administration itemized a series of suggested amendments, including limiting applicability of the sanctions to employers of four or more, a proposal echoed by several other witnesses; and reserving criminal penalties for violation of an injunction against a pattern or practice of offenses. Other witnesses, including Lane Kirkland, specifically commended the penalty structure in the bill.

Opponents of employer sanctions generally recommended increased enforcement of existing immigration and labor laws as an alternative means of controlling illegal immigration. The Attorney General, among others, was adamant that increased Border Patrol enforcement alone could not control the problem. However, the witnesses generally agreed on the need for increased resources for INS, either in conjuction with or separate from employer sanctions.

B. Adjudication procedures and asylum

The Simpson-Mazzoli bill would have expedited asylum processing and other immigration adjudications and would have established a U.S. Immigration Board and an administrative law judge system. Response to the proposed Immigration Board was generally positive while the asylum and other adjudications provisions drew more mixed reactions.

Although there was general support for the U.S. Immigration Board and administrative law judge system from such groups as the Citizens' Committee for Immigration Reform, the National Conference of Catholic Bishops of the U.S. Catholic Conference, the National Association for the Advancement of Colored People (NAACP), and the American Jewish Committee, some concerns were expressed. The Administration did not favor making the Immigration Board entirely independent within the Department of Justice (DOJ). Administration spokesmen said that asylum determinations could be made, as proposed in the Administration's legislation, by special INS asylum officers rather than by specially-trained administrative law judges as proposed in the Simpson-Mazzoli bill. The Federation for American Immigration Reform (FAIR) suggested that the proposed Immigration Board should be reexamined. There was some support for the creation of an Article I court to handle immigration matters.

There was general agreement that asylum proceedings should be streamlined. However, numerous concerns were expressed about the following: (1) the bill's proposed expedited exclusion provision which would have allowed INS inspectors to immediately exclude without a hearing aliens without documentation or a reasonable basis for legal entry or who were not requesting asylum; and (2) the bill's provisions to reduce or eliminate administrative and judicial review in asylum and exclusion cases. It was argued by such groups as the American Civil Liberties Union (ACLU), the NAACP, the Mexican American Legal Defense and Education Fund (MALDEF), the National Council of La Raza, the U.S.-Asia Institute, the American Jewish Committee, and by Rep. Chisholm that such provisions may violate the due process rights of aliens. There was particular concern that the summary exclusion provision would create a situation that permitted abuses by INS officials. Althea Simmons, Director of NAACP, noted that "summary exclusion strikes the heart of our democratic system."

The role the Department of State (DOS) would have in asylum processing was queried by both the ACLU and the Administration.

C. Legal immigration

The Immigration Reform and Control Act included provisions restructuring the existing system for the admission of legal immigrants. It included all immigrants, exclusive of refugees, under an annual ceiling of 425,000, with a restructured preference system divided into two tracks. The family reunification preferences would be allotted 325,000 visas a year, minus the number of immediate relatives of U.S. citizens admitted the previous year; the independent track would be allotted 100,000 minus the previous year's special immigrants.

Sen. Walter Huddleston, a cosponsor of S. 2222, was strongly critical of the bill for not including a cap on all permanent entries, including both immigrants and refugees, a position shared by FAIR. Sen. Huddleston said that the Refugee Act of 1980 had provided inadequate control over refugee admissions, and that their number would be increasing if employer sanctions and a partial ceiling on legal immigration were enacted. Father Theodore Hesburgh indicated his opposition to a total cap on immigrants and refugees because of the need for sufficient flexibility to deal with refugee emergencies in a humane manner.

Father Hesburgh said family reunification was the "No. 1 consideration in immigration," and noted that the proposed preference system might err a bit on the side of restricting family reunification. He suggested an increase in the overall ceiling, particularly in view of the increased numbers for Mexico and Canada, a position shared by the Administration.

Administration officials indicated they were satisfied with the existing legal admission system and had reservations about including immediate relatives of U.S. citizens under a cap. A number of organizations concurred, including the National Conference of Catholic Bishops of the U.S. Catholic Conferences, MALDEF, the U.S.-Asia Institute, and the American Jewish Committee. A number of organizations also opposed the elimination of fifth preference (brothers and sisters of adult U.S. citizens) and the restriction of second preference to unmarried minor (as opposed to all unmarried) children of immigrants, on the grounds that these were considered to be close family relatives.

Proposed changes in the labor certification provision to allow for the use of national labor market data were generally commended by both the U.S. Department of Labor and the AFL-CIO. Two witnesses, testifying on behalf of the American Council on International Personnel and the Houston Chamber of Commerce, suggested combining this change with a continued use of individual labor certification based on particularized job offers.

D. H-2 temporary workers

The Immigration Reform and Control Act contained amendments to the existing provisions for the admission of temporary workers, essentially establishing a distinct program for H-2 agricultural workers. Among other things, the proposed amendments would have provided a statutory basis for the Secretary of Labor's certification function and made it mandatory rather than advisory, and would have codified in the law many H-2 procedures which are now prescribed by regulation.

Attorney General Smith and USDA General Counsel James Barnes commented on the special labor needs in agriculture, particularly in the West and Southwest, that were expected to result from the implementation of employer sanctions. The Attorney General indicated the Administration's willingness to accept the proposed H-2 program for agriculture as a substitute for the experimental temporary worker program proposed by the Reagan Administration, with further modifications they were proposing. Mr. Barnes proposed among other things that the Secretary of Labor's role should remain advisory and the Secretary of Agriculture should be included in the development of regulations. Under Secretary of Labor Malcolm Lovell indicated that he expected the H-2 program to "substantially increase" under the new proposals from its current size of about 43,000 entries a year.

This view was not shared by spokesmen for California agriculture who testified that the proposed new H-2 provisions would be more, rather than less, restrictive because of the increased role of the Secretary of Labor, and characterized them as a fatal flaw in the proposed legislation. A representative of the California Chamber of Commerce's Agricultural Department said their support of employer sanctions was conditioned on legitimate access to alien workers when and where they were needed. Changes suggested by these witnesses included providing a statutory role for the Secretary of Agriculture in the H-2 consultation process.

On the other hand, Lane Kirkland of the AFL-CIO indicated their dislike of the H-2 program and belief that it should be phased down. Witnesses for MALDEF and the National Council of La Raza expressed concern that a streamlined H-2 provision could lead to a guestworker program, and the LULAC spokesman expressed support for the H-2 provisions but not for a guestworker program. The NAACP representative said there was no need for a guestworker program as long as there was high unemployment in the country.

E. Other nonimmigrants

Several other changes relating to nonimmigrants were proposed in the Simpson-Mazzoli bill, including the creation of a three-year pilot visa waiver program for visitors from certain countries with low visa rejection rates and the addition of the requirement that "F" and "M" foreign students after completion of their studies return home for two years before being eligible for adjustment of status in the U.S.

The Administration, Gov. Graham of Florida, and Rep. Santini of Nevada addressed the proposed visa waiver program, indicating their support for the concept but suggesting that the program should be more extensive. Proposals were made to raise the rejection ratio in the proposed legislation from 1.5 to 2 percent so that major Western European nations would be included. It was also proposed that the reciprocity rule should allow eligibility for those countries prepared to extend similar treatment to U.S. citizens in the future; that the five-country limit on the program should be lifted; and that the visa waiver program should be addressed in legislation separate from the Simpson-Mazzoli bill.

Other comments on nonimmigrant provisions included a proposal by Louie Welch, President of the Houston Chamber of Commerce, that the two-year foreign residence requirement for foreign students be eliminated and questions from Ambassador Diego Asencio regarding the practicality of a return to the maintenance of status requirement for adjustment of status.

F. Legalization

The Simpson-Mazzoli bill proposed a program that would have, among other things, allowed otherwise eligible aliens who were in the U.S. without valid documentation prior to Jan. 1, 1980, to apply for one of two forms of legalized status, depending on their date of entry or the date they became out of status. Those entering without documentation or who were out of status prior to Jan. 1, 1978, would have been eligible for permanent resident status; those entering without documentation or who were out of status prior to Jan. 1, 1980, would have been eligible for temporary resident status.

The concept of the legalization program proposed in the Simpson-Mazzoli bill was generally regarded positively by the Administration and by such groups as the AFL-CIO, the Citizens' Committee for Immigration Reform, representatives of local governments in Florida and California, the National Conference of Catholic Bishops of the U.S. Catholic Conference, and special interest groups such as the National Association for the Advancement of Colored People (NAACP), the League of United Latin American Citizens (LULAC), the Mexican American Legal Defense and Education Fund (MALDEF), the U.S.-Asia Institute, and the American Jewish Committee. A typical description of the program was given by Benjamin R. Civiletti, Co-chairperson of the Citizens' Committee for Immigration Reform, who said it was a realistic yet compassionate program which "strikes a fair compromise."

However, concerns were expressed about some of the specific requirements of the program as outlined in the bill. The Administration suggested that there be one cutoff date in the legalization program, Jan. 1, 1981, with at least eight years' continuous residence required for adjustment to permanent resident status. A number of groups suggested extending the eligibility dates for either permanent or temporary status, thus making the categories more inclusive; others suggested using one date for a single legalized status. The most frequent suggestion, expressed by such special interest groups as NAACP, LULAC, MALDEF, the National Council of LaRaza, and the G.I. Forum of the U.S. was to extend the date for temporary residency to the date of enactment so that those persons who entered the U.S. without documentation or who were out of status between Jan. 1, 1980, and the date of enactment were not left in limbo.

Other concerns about the legalization program related to reimbursement to States and localities for the cost of public services provided to those receiving the newly-legalized status. Spokesmen for localities in Florida and California recommended that there be Federal reimbursement for State and local costs or some kind of impact-aid provided and the Administration recommended that benefits should not be granted to those in temporary resident status.

Gov. Graham of Florida indicated that he had concerns about the portion of the program that would waive determining whether the Cuban/Haitian Entrants had come for political or economic reasons, while Rep. Chisholm and the NAACP indicated that they would prefer broader dates for Haitian eligibility since many Haitians had entered the U.S. since Oct. 10, 1980.

Other objections expressed by the Hispanic and other special interest groups included that there should be provision to expedite the acquisition of citizenship for those legalized; that there should be some provision for assistance for those waiting to acquire legal status if they "fall under hardship"; that voluntary agencies should be used to provide initial outreach to those eligible for legalization; and that the grounds of inadmissibility should be narrowed so that only those who pose a threat to their communities or the security of the nation would be barred from receiving legalized status.

A final concern was expressed by the AFL-CIO that the legalization program should be delayed until the flow of illegal aliens was halted.

SUMMARY OF HEARINGS HELD BY THE SENATE JUDICIARY SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY, JULY 1981–APRIL 1982

SUMMARY OF INDIVIDUAL HEARINGS

1. JULY 30, 1981, "ADMINISTRATION POLICY ON IMMIGRATION AND REFUGEE POLICY"

Joint Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee, and the Subcommittee on Immigration, Refugees and International Law of the House Judiciary Committee.

Senator Alan Simpson (chairman of the Senate subcommittee), presiding.

Present: Senators Simpson (R., Wyo.), Grassley (R., Iowa), Kennedy (D., Mass.), Huddleston (D., Ky; non-member), and Hawkins (R., Fla.; non-member). (Representatives Mazzoli (D., Ky.; chairman of the House subcommittee), Schroeder (D., Colo.), Fish (R., N.Y.), Lungren (R., Calif.), McCollum (R., Fla.), and Shaw (R., Fla., non-member).

A. *Opening statements of the subcommittee chairmen and ranking minority members*

Senator Alan Simpson stated that the joint hearing process exemplified the bipartisan determination of the two subcommittees to develop immigration reform legislation which was "both substantively sound and politically feasible." He stressed that the primary obligation and justification of government is to promote the national interest, which he defined as "the long-term well-being of the majority of its people and their descendents," and stated that this was the standard by which these discussions would be measured.

Representative Romano Mazzoli also stressed the bipartisan nature of the undertaking, noting that there were "no Democratic or Republican positions, no liberal or conservative positions." Senator Edward Kennedy expressed the belief that the American people are demanding changes in immigration policy, and that the work of the Select Commission on Immigration and Refugee Policy provided an excellent departure point for both the Administration and the Congress. Representative Hamilton Fish stated that solving the problem of continued illegal immigration was a prerequisite for American acceptance of a generous and humane immigration policy, and expressed optimism that a concensus would develop from this hearing and the hearings to come.

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B. Statement and questioning of Attorney General William French Smith

The principal witness was Attorney General William French Smith, who outlined the Reagan Administration's proposed immigration and refugee policy. He stressed the need for regaining control of our borders and deterring illegal immigration, whether by land or by sea, and stated that the proposals announced that morning by President Ronald Reagan represented a comprehensive and integrated approach toward that end. He stated further that, "The overriding purpose of the President's proposals is to make our laws and policies more realistic, and then to enforce those laws effectively." He indicated that the proposals represented "the Administration's best ideas on how to regain control of our national borders without closing the doors to this unique land of opportunity."

The Attorney General divided the Administration's proposals into four areas emphasizing the first two: (1) illegal immigration, (2) mass arrivals of undocumented aliens, (3) legal immigration and refugee admissions, and (4) benefits for refugees and persons granted asylum. In the following discussion, the Attorney General's comments regarding each of the four areas are considered separately, followed in each case by major points brought out in the subsequent questioning by the subcommittee members.

1. *Illegal immigration.*—The Attorney General indicated that the Administration proposed five related initiatives to curtail illegal immigration. He outlined them in some detail, as follows:

(*a*) Increased enforcement of existing immigration and fair labor standard laws. Specifically, he said the Administration would be requesting an additional $75 million and 564 additional positions for the U.S. Immigration and Naturalization Service's (INS) fiscal year 1982 budget ($40 million for enforcement and $35 million for detention), and an additional $8 million for increased enforcement of the Fair Labor Standards Act by the Labor Department's Wage and Hour Division.

(*b*) A law imposing penalties against employers of four or more who knowingly hire illegal aliens, with civil fines of $500 to $1,000 for each alien hired, and authorization to seek injunctions against employers who engage in a pattern or practice of such employment. The Attorney General indicated the Administration was "opposed to the creation of a national identity card." Acceptable proof of eligibility to work would be INS documentation or two of the following: birth certificate, driver's license, social security card, or selective service registration. Additionally, both the new hire and the employer would sign a form certifying, respectively, that the former was eligible to work and the latter had seen the required documentation and had "no reason to believe the employee is not eligible to work."

(*c*) An experimental temporary worker program for up to 50,000 Mexican nationals annually for 2 years. Workers would be free to change employers within specific job categories targeted by the programs in the affected States. Normal wages and working standards laws would apply to the workers, but they could not bring in family members or participate in Federal benefit programs.

(d) Legalization of status of otherwise admissible aliens illegally present in the United States as of January 1, 1980 as "renewable term temporary residents," on a 3-year renewable basis, with no family members or Federal benefits. After 10 years continuous residency, such aliens could apply for permanent resident status provided they were otherwise eligible and had minimal English language ability.

(e) International cooperation within the Western Hemisphere to enforce immigration laws and discourage illegal migration, including negotiation with Mexico regarding alien smuggling and control of entry into the United States by third country nationals.

Questions: The Attorney General was asked more questions about the proposals relating to illegal immigration than any of the other areas. The questions focused on worker ID in connection with the proposed employer sanctions, the experimental temporary worker program, and legalization.

Questions relating to work ID were asked by Senators Simpson and Grassley and Representatives Schroeder and Lungren. The Attorney General defended the Administration's decision against an upgraded social security card on the grounds of cost (estimated at between $850 million and $2 billion), the insecurity of the documents on which the social security card itself is based (e.g., the birth certificate), and the desirability of trying the simple way first.

With regard to the temporary worker program, Senator Kennedy questioned the rationale for admitting 50,000 temporary workers annually in the face of 7 percent unemployment. The Attorney General responded that there was no empirical basis for the number chosen, but that it represented what they thought to be an appropriate and manageable figure for an experimental program. In response to Senator Simpson's related concern that the guest workers might displace U.S. workers under the terms of the program, the Attorney General clarified the role of the States in the program's administration, indicating that a State could opt out of the program entirely or restrict it to certain occupational classifications.

Congressman Fish and Senator Kennedy questioned the Attorney General about the specifics of the proposed legalization program, particularly the 10-year temporary residence requirement for adjustment to permanent status. The Attorney General clarified that this period included continuous residence before as well as after acquiring "renewable term temporary resident" status. He explained that the lengthy time requirement represented an attempt to balance the perceived need to regularize the status of illegal aliens with the desire not to reward illegal behavior or to encourage future illegal migration. Regarding the restriction against bringing family members, he indicated his belief that most of the immediate family members were already here and would be covered by the program.

The Attorney General emphasized the interrelatedness of the various illegal alien proposals throughout his explanation of and response to questions on them. He said that, taken together, the proposals expanded somewhat the opportunities for legal employment and increased both the deterrent and enforcement effort against illegal employment. A related point was made by Senator

Simpson with regard to the three elements he saw to be central to controlling illegal immigration: (1) increased internal and border enforcement, (2) employer sanctions against those who persisted in a pattern or practice of exploitation, and (3) "some kind of identifier, verifier system, counterfeit-resistant." In effect, he indicated that these measures were prerequisites for the Administration's proposed temporary worker program to succeed in diverting aliens from legal to illegal employment.

2. *Mass arrivals of undocumented aliens.*—The Attorney General grouped both the 1980 Mariel boatlift of 125,000 Cubans and the continuing migration of Haitians under this heading. He noted that "mass migration[s] of undocumented aliens to the United States are a recent phenomenon," and one for which the nation was "woefully ill-prepared," with disastrous consequences. In order "to provide adequate legal authorities to deal with future migration situations," as well as with the Cubans and Haitians already here, the Attorney General outlined a seven-part program, in less detail than the illegal immigration control program, as follows:

(*a*) Legislation to prohibit bringing undocumented aliens to the United States, and strengthening current law providing for the interdiction, seizure, and forfeiture of vessels used in violation of the law.

(*b*) Legislation authorizing the President to direct the Coast Guard to interdict unregistered vessels and the flag vessels of foreign governments requesting such assistance, when attempts to violate U.S. law are suspected.

(*c*) An additional $35 million for constructing additional permanent facilities for temporarily detaining "illegal aliens upon arrival pending exclusion or granting of asylum." Regarding this proposal, the Attorney General commented subsequently on the need for additional facilities "to house undocumented aliens temporarily until their eligibility for admission can be determined," and enunciated one of the most significant themes of the Administration's policy: "By treating those who arrive by sea in the same way we have long treated those who arrive over our land borders, our policy will be evenhanded, and we can avoid the severe community disruptions that result from large-scale migrations."

(*d*) Legislation to reform and expedite exclusion proceedings, including creation of asylum officers within INS who would hear applications for asylum, with discretionary review by the Attorney General. In further comments on this proposal, the Attorney General noted that in the past, the screening and processing of refugees has taken place overseas, with very few applications for asylum by people already in the United States. Fewer than 3,800 asylum requests were received in fiscal year 1978, compared to 19,485 in fiscal year 1980. The number of pending asylum applications will reach 60,000 during fiscal year 1981, not including the approximately 140,000 applications filed by Cubans and Haitians. Attorney General Smith stated that "our policies and procedures for dealing with asylum applicants, which have been generous and deliberate, have crumbled under the burden of overwhelming numbers."

(*e*) Legislation to provide the President with special authority in Presidentially-declared emergencies to restrict U.S. travel to designated countries, to direct Federal agencies to take necessary actions to reimburse State and local governments for authorized expenditures, and to establish an immigration emergency fund for $35 million.

(*f*) International measures to secure the return of excludable Cubans, to seek additional resettlement opportunities for Haitians within the Western Hemisphere, and to increase cooperation with Haiti in restricting illegal immigration.

(*g*) Legislation allowing Cubans and Haitians who arrived here prior to January 1, 1981 to apply for permanent resident status after 5 years temporary status, if otherwise eligible and minimally proficient in English.

Questions: Comparatively few questions were asked about the mass asylum proposals, which were scheduled as the subject of a Senate hearing the following day.

Congressman Fish questioned the Attorney General about the 5-year continuous temporary residence requirement for the Cubans and Haitians, as opposed to the 10-year requirement for other undocumented aliens, before they may apply for permanent residence. The Attorney General explained that the reason for the difference was "primarily history." Under the Cuban Refugee Act of 1966, Cuban entrants could apply for permanent status initially after 2 years and, as the act was amended in 1980, after one year. Further, the Fascell-Stone amendment had given the Cubans and Haitians a special status close to that of refugee. The Attorney General concluded that the Cubans and Haitians "were not really illegal immigrants," and that it was appropriate to treat them differently.

Representative Bill McCollum questioned whether Castro would willingly accept any of the Cubans back, and inquired whether the Administration had considered their forceable return. The Attorney General said that they had discussed every possibility and that while they were not optimistic about their return on a negotiated basis, they were going to pursue it. Representative McCollum stressed the extent to which Florida felt overwhelmed by the Cubans and Haitians and encouraged the Attorney General to find other locations.

Both Representative McCollum and Senator Paula Hawkins questioned the Attorney General about interdiction of the Haitians, including whether legislation was required and what would happen in the meantime. He responded that they would "do whatever current law permits us to do in that respect," but did not formally announce the Administration's intent to begin interdiction prior to the enactment of legislation.

3. *Legal immigration and refugee admissions.*—Attorney General Smith indicated that the Administration was generally satisfied with existing law relating to the admission of immigrants and refugees, with two exceptions. It recommended an increase in the annual ceilings on Canadian and Mexican immigration from 20,000 to 40,000 for each country, with the numbers unused by one country transferable to the other. The rationale for this proposal is "the special relationship the United States has with its closest neighbors, the fact of common borders, and the need to find realistic alternatives to illegal immigration."

He also briefly outlined a proposal to streamline the labor certification requirements applicable to aliens seeking admission as immigrants under the occupational preferences (third and sixth). Instead of individual certifications, the Department of Labor would annually publish a list of occupations for which adequate domestic workers were not available. Foreign workers in these occupations with a verified job offer would be eligible to apply to the consular officer overseas for visas.

Questions: The questions in this area concerned more what was not proposed than what was. Both Senator Grassley and Senator Huddleston commented on the numbers. Senator Grassley questioned whether the increase proposed for Mexico and Canada meant that the total numerical limit on immigration would increase to 310,000, and inquired as to whether the Administration had considered increasing the contiguous countries' allotments within the existing ceiling of 270,000. The Attorney General indicated that the 310,000 figure was correct and that the alternative would mean cutting down immigration elsewhere. In a related observation, Senator Huddleston criticized the Administration's proposals in part on the grounds that "there have been no hard decisions made about reasonable limitations on the number of immigrants and refugees who come into the country."

Representives Mazzoli and Schroeder were both critical of the existing definition of "refugee," at least as it is administratively interpreted with regard to Indochinese refugees. The Attorney General responded that the problem lay, not with the legal definition, but with "the fact question as to whether or not a given situation comes within that definition." It was agreed that this would be pursued further during the refugee consultation in September.

4. *Refugee and asylee benefits.*—The Attorney General indicated that the Administration would continue the present categorical grant programs available for refugee resettlement under the authority of the Refugee Act of 1980 for fiscal years 1982 and 1983. However, he proposed reducing the level of cash assistance payments to those refugees who do not qualify for normal Federal welfare programs. Additionally, he indicated that the Department of Health and Human Services would explore possible options for impact aid for those locations disproportionately affected by refugee admissions.

C. Executive branch panel

1. David Swoap, Undersecretary of Health and Human Services;
2. Diego Asencio, Assistant Secretary of State for Consular Affairs;
3. Robert W. Searby, Deputy Undersecretary of Labor for International Affairs;
4. Doris Meissner, Acting Commissioner of the Department of Justice's Immigration and Naturalization Service.

1. *David Swoap, Undersecretary of Health and Human Services (HHS).*—In his opening remarks, Mr. Swoap provided an overview of existing Federal refugee programs. He noted that the Refugee Act of 1980 authorized for the first time a permanent U.S. policy toward refugee resettlement assistance, administered in large part by HHS' Office of Refugee Resettlement. The purpose of this assist-

ance was to ease the refugees' transition to life in the United States and to alleviate the burden on the States and localities.

Mr. Swoap stated that half a million refugees have entered since mid 1979 in addition to the Cuban and Haitian entrants. Specifically, over 212,000 refugees were accepted in 1980, and 180,000 are expected in 1981. These, plus the unexpected arrival of 125,000 undocumented aliens from Cuba and more than 35,000 Haitians in recent years "have strained the ability of the public and private voluntary sectors to foster effective resettlement." Mr. Swoap briefly summarized the Federal assistance provided to help offset the major resettlement impacts, specifically in the areas of cash assistance, medical assistance and health care, unaccompanied minors, and education.

Questions: Mr. Swoap was questioned by Representatives Mazzoli and Lungren about the Lungren bill (H.R. 2142), which would extend Federal refugee assistance for an additional period beyond the 3 years now authorized by law. Mr. Swoap said the bill is opposed by HHS on the grounds of cost and because of the Department's objection to continuing "wholesale eligibility" beyond a 3-year period. He indicated that approximately 20,000 people would be affected in California. In response to Representative Lungren's question, he indicated further that it was their position that secondary migration (i.e., refugees changing location after an initial resettlement attempt) should not be taken into account in determining the time period.

In interchanges with both Representative Lungren of California and Representative McCollum of Florida, Mr. Swoap reiterated the Attorney General's earlier statement that the Administration would investigate impact aid to disproportionately affected areas. He indicated that funds were already targeted for social services and education in certain impacted areas, including South Florida.

In response to questioning by Representative Mazzoli, Mr. Swoap stated that there was coordination among the various agencies involved in refugee admission and resettlement, and that the factor of cost to HHS was adequately taken into account. He was also questioned by Senator Simpson about the transfer of the Office of Refugee Resettlement to the Social Security Administration, within HHS. He stated there were basically two reasons for this transfer: first, the Social Security Administration had the basic responsibility for income maintenance programs; and, second, Mr. Svahn, the current SSA Commissioner, had had a great deal of experience with refugee programs.

2. *Diego Asencio, Assistant Secretary of State for Consular Affairs.*—In his prepared statement, Mr. Asencio stated that the Administration had decided on a package approach which he believed would serve both the domestic and foreign policy interests involved in immigration and refugee policy. In his oral testimony, he said he believed we were "at an historic moment," with the opportunity to do something major to bring immigration under control without adversely affecting our basic traditions. He also stressed the package approach, with special emphasis on the temporary worker program and the proposed increase in immigration. Both were intended as part of the total effort to bring illegal immigration under control, and thus to drastically reduce the total numbers coming in.

Questions: In response to questions from Representative Fish and Senator Simpson about the details of the legalization program, Mr. Asencio indicated that the 10-year period was a "completely arbitrary one," reflecting the Administration's desire not to reward illegal behavior and noted the "probationary status" of the temporary residents. Representative Fish expressed the view that 7 years, the time required under current law to be eligible for suspension of deportation, seemed to him a more reasonable time. Senator Simpson indicated sympathy with the concept of legalization for the reasons expressed by the Administration as well as the practical reason that, "If we couldn't find them coming in, how are we going to find them to get them out?"

Mr. Asencio and George Jones, Office Director, Regional Political Affairs of the Latin American Bureau, were questioned on the political situation in Haiti and the specifics of the proposal for interdiction at sea. Mr. Jones indicated that his Bureau was "not aware of any instances of persecution of Haitians who have been returned to Haiti," and that Haiti had been very helpful and cooperative in preliminary discussions of the Administration's new policies.

It was also indicated that the Coast Guard had reported that the Haitians were coming increasingly in sizable boats, and that the operation was increasingly commercialized, "run by people who are trafficking in human beings for profit," in Mr. Jones' words. The boats were primarily Haitian flag vessels, although some third flag vessels had also been used. Mr. Jones expressed the belief that the Haitians themselves paid for the voyage with money borrowed from loan sharks, and worked it off on their arrival here. He said that he had "absolutely no indication whatever that the government of Haiti is in any way involved in this."

3. *Robert Searby, Deputy Undersecretary of Labor for International Affairs.*—Mr. Searby stated that "control over the entry of foreign nationals into our nation and its labor market is an integral part of our national sovereignty." Like the other witnesses, he stressed the "package approach" of the Administration's policy. He indicated his strong support for increased enforcement of the Fair Labor Standards Act, but stated that the proposal for employer sanctions was the "cornerstone for gaining control over our borders and regulating the entry of foreign nationals into our labor market. Labor law enforcement cannot address situations where employment conditions meet minimal standards." He also indicated support for a large-scale legalization program and an experimental small-scale Mexican foreign worker program to "help facilitate labor market adjustment, both at home and abroad." He alluded briefly to the proposal to streamline the labor certification procedure by providing a schedule of occupational shortages, instead of making case-by-case determinations.

Questions: During questioning by Representative Fish, Mr. Searby stressed the "experimental nature" of the proposed temporary worker program. Senator Simpson stated that he favored the experimental program, and questioned plans for monitoring it. Mr. Searby responded that this was still in the planning stage, but that they would focus on certain job categories in certain States. He noted that they expected the demand to come in certain southwest States, since the H-2 program, involving 47,000 entries last year, was being used in the east. Under the experimental program, the certification would be done by participating States based on their job market situation, and the Labor Department would allocate the workers proportionately among the States.

4. *Doris Meissner, Acting Commissioner, INS, Department of Justice.*—Ms. Meissner indicated that in recent years INS had been "overwhelmed by changing circumstances," and had found the task of administering the nation's immigration laws to be very difficult. She said the Administration's policy would give INS the necessary guidance and tools for this task.

Questions: In response to questions from Senator Simpson about the degree of certainty required of the employer under the sanctions proposal, Ms. Meissner indicated that the Administration's "employer sanctions proposal * * * is really very similar to the proposal that has been passed twice in the House of Representatives, and reverifies * * * the conventional wisdom that under our present circumstances, one can ask employers to make this kind of query and one can be satisfied if they keep a record, that the query has been honestly made." She indicated that they believed they would be in a strong position regarding aggravated offenders who knowingly violate the law because they would probably have other information on them.

Like the other witnesses, Ms. Meissner stressed "the interrelatedness of the proposals," and said that standing alone, the individual proposals were insufficient and probably politically unacceptable.

In response to questions by Representatives Fish and Lungren, Ms. Meissner indicated that there were no plans to merge the Customs Service and INS, in part because of the desire to focus attention on both the drug enforcement and immigration issues, but that she expected that there would be "a gradual merging of functions without going through the pain of changing the identity of the agencies."

In response to questioning by Representative Mazzoli, she noted that they were unable to bring criminal charges against the owners of confiscated boats which had been used to bring aliens illegally to the United States, and that they were working their way through civil procedures. She noted that the government had lost its case regarding the application of the existing criminal penalties, and that one of the President's proposals was intended to insure that criminal sanctions would be available in the future.

In response to two questions by Representative McCollum and Lungren relating to the proposed legalization program, Ms. Meissner expressed the opinion that temporary residents under the legalization program should have full petitioning rights if and when they attain citizenship; and that the English ability required for their adjustment to permanent status would be minimal, "an ability to communicate in terms of basic commerce and jobs, facility within the community." In defense of this requirement, she stated, "The view has been that we are committed to a pluralistic society and that we intend to continue that commitment in this country, but a pluralistic society only works to the extent that there are some common features among people, and language is one of the major common features."

II. JULY 31, 1981, "UNITED STATES AS A COUNTRY OF MASS FIRST ASYLUM"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Present: Senators Simpson (R., Wyo.), Grassley (R., Iowa), Kennedy (D., Mass.), and DeConcini (D., Arizona).

A. Opening statement of the subcommittee chairman

Senator Alan Simpson began by outlining the major problems this country has recently faced due to mass asylum entries, including the costs incurred by Federal, State and local governments, as well as voluntary agencies and individuals, to house, process, and resettle these entries. He also addressed the "complex and ponderous nature" of asylum proceedings, adjudications, and the appeals process which he indicated have retarded the determination of Cuban and Haitian status. He pointed out that the United States is signatory to the 1967 U.N. Protocol Relating to the Status of Refugees and bound by that agreement to refrain from returning persons to a country where they will be persecuted. He added that that does not mean that we have to accept all legitimate asylees for permanent resettlement here.

Senator Simpson further said these hearings would atempt to resolve two issues: (1) the legal status of the Cubans and Haitians who have entered the United States; and (2) the policies and procedures which should be adopted to handle future mass asylum cases and crises. He pointed out that clear and strong policies and procedures need to be developed to assist in distinguishing between legitimate and frivolous asylum claims and to ensure refuge is provided for legitimate asylees.

B. Administration panel

1. Thomas Enders, Assistant Secretary of State for Inter-American Affairs;
2. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service (INS);
3. Phillip N. Hawkes, Director, Office of Refugee Resettlement, Department of Health and Human Services (HHS);
4. David Hiller, Special Assistant to the Attorney General.

Statements

1. Thomas Enders addressed the foreign policy implications of large-scale migrations from various foreign countries to the United States. he emphasized the differences between a politically-inspired exodus, such as that from Cuba in mid-1980, and the sustained emigration of people from a country on the basis of individual choice, such as has occurred with Haiti. He outlined four elements the Administration wishes to accomplish regarding preventing future mass exoduses from Mariel: (1) assure that the Cuban leadership and people know what the U.S. response will be to a new Mariel boatlift; (2) deny Castro the use of U.S. boats to bring a flood of migrants to this country; (3) allow the Coast Guard and Navy to interdict Cuban and third country vessels, with the consent of the third countries, if there is reasonable cause to believe they may be en-

gaged in transporting illegal aliens in violation of U.S. laws; and (4) provide for immediate detention and prompt exclusion of those who do arrive in the U.S. and are found inadmissible.

2. Doris Meissner addressed the inadequacy of current policies and procedures to deal with mass arrivals of undocumented aliens. She listed the 7-point program proposed by the Administration to prevent the recurrence of a Mariel-type exodus, deter the continuing arrival of undocumented aliens, and deal with the large number of undocumented Cubans and Haitians already in the United States.

Ms. Meissner described what would be included in and the rationale for some of the reforms proposed by the Administration. She emphasized the reforms proposed for asylum and exclusion proceedings which would provide: that admissibility of undocumented aliens would be determined administratively by immigration officers; that asylum applications would be adjudicated by asylum officers, with judicial review available only as part of the judicial review of final orders of exclusion and deportation; that there would be no judicial review of asylum denials of cases of undocumented aliens subject to exclusion; that full adversarial hearings would be retained for those cases where there is some documentary claim to enter; and that the period for filing for a review of a deportation order would be shortened from 6 months to 30 days. She also described the proposed emergency immigration legislation.

3. Phillip Hawkes discussed the role of the Department of Health and Human Services (HHS) in dealing with the influx of Cubans and Haitians and provided background information on the efforts of other Federal agencies. He said Sec. 501 of the Refugee Education Assistance Act authorized provision of certain assistance to Cuban and Haitian Entrants and that under this authority, HHS established the Cuban-Haitian Entrant Program in October 1980 which provides Federal funding for assistance and services. Thirty-two States participate in the program. According to Mr. Hawkes, HHS is responsible for coordinating and assisting Cuban entrants at some detention facilities, including arranging for their initial placement or resettlement.

Questions: Senator Simpson asked Mr. Enders about the status of the Coast Guard interdiction program, and Mr. Enders responded that the Administration believes legislative authority for the program already exists and that it is currently being discussed with the Haitian government. They hope to begin the program soon.

In response to a question from Senator Simpson, Mr. Enders stated that a mass exodus like the Cuban emigration last year may be imminent and that preventing it depends upon "the assertion of our national will." He said large-scale individual migrations such as that from Haiti are not anticipated in the near future.

In response to a question from Senator Simpson, Mr. Enders said that the State Department believes most Haitians, El Salvadorans and Nicaraguans are economic migrants rather than victims of persecution as defined by the Refugee Act of 1980. In related questioning by Senator Kennedy regarding the issue of voluntary departure by the Salvadorans and how their status differs from that of the Nicaraguans in 1978–79, Mr. Enders responded that the Salvadorans are not subject to persecution as defined by law. He said there has been long-term economic migration of Salvadorans to this country and the State Department has no reason to believe they are being singled out for mistreatment. In response to questions from Senator Kennedy regarding Mexico's policy regarding Salvadorans, Mr. Enders said he believes Mexico is unable to return them. Senator Kennedy emphasized the level of violence in El Salvador and said that he hoped the policy regarding those fleeing would be continually under review. The need for redefining the legislative meaning of "refugee" and "persecution" was later addressed by Senator Simpson who indicated he believed such a redefinition was needed so that people can qualify when they risk injury and death by being in a country. Ms. Meissner, in response to questions from Senator Simpson, stated that she believes the current definitions are adequate.

As requested by Senator Simpson, Mr. Hawkes described ORR's role in monitoring voluntary and private organizations as reviewing their proposals and trying to monitor their activities to ensure the conditions of the proposals are met. He suggested that sponsors might benefit by having better orientation to their responsibilities but that requiring them to assume financial or legal responsibilities might result in fewer people agreeing to be sponsors.

There were several questions about implementing aspects of the Administration's proposed program. Senator Simpson asked about the proposed renewable term entry cards for Cubans and Haitians and Ms. Meissner said that the system was designed to provide for safe monitoring but that it would be a considerable administrative burden.

Mr. Hiller, in response to a question from Senator Grassley, indicated that determining whether an illegal alien was residing in this country prior to the date specified in the President's program could be difficult. He said that they would rely on factual evidence, such as W-2 forms or tax receipts.

In response to questions from Senator Grassley, Ms. Meissner said that U.S. acceptance of Southeast Asians as political refugees is an interim decision which would be reviewed in consultation with Congress in September. She said information for case decisions came from one-on-one interviews and an overall assessment of conditions in a particular part of the world. She said that many believe the flow from Southeast Asia is changing, reflecting more emigrants than refugees.

In response to a question from Senator Grassley, Mr. Enders indicated that the Administration wants to return the Cubans who are inadmissible under law to Cuba but that he would rather not detail possible means of accomplishing this.

C. Senatorial panel

1. Hon. Paula Hawkins, U.S. Senator from the State of Florida;
2. Hon. Lawton Chiles, U.S. Senator from the State of Florida;
3. Hon. Walter D. Huddleston, U.S. Senator from the State of Kentucky;
4. Benjamin Civiletti, Co-chairman, Citizen's Committee for Immigration Reform

Statements

1. Senator Hawkins indicated that Florida receives much of the mass migrations from other countries and that this is causing problems for the State. She said that from January 1, 1981 to the present, it it estimated that from 16,000-32,000 Haitians have arrived in Florida in addition to the people who arrived during the Mariel boatlift. She said that Florida estimates that services for these aliens will cost a minimum of $30 million that won't be reimbursed by the Federal Government and that, in addition, the influx of aliens is causing social tensions, health hazards, release of possible subversives from Cuba, and an increase in crime.

She indicated that immigration and refugee matters are national problems and require a national solution. She believes the people of Florida feel the U.S. Government is not doing its part. She supports legislation to penalize boatowners who bring illegal aliens into the country. She also supports speeding up the exclusionary hearing process and creating additional holding facilities for aliens.

2. Senator Chiles said that dealing with long-term immigration issues will help the situation in Florida eventually, but that that approach will take time and the situation in Florida is in a crisis. He believes there are flaws in the Administration's proposals for both the short-term and the long-term. He indicated that for the short term, the proposals don't stop the daily flow of boats to South Florida. He said holding facilities are already overcrowded and they need funds now for additional facilities, located outside of South Florida. He also indicated that he believes action should be taken to immediately return to Cuba criminals convicted of violent crimes. He pointed out that there has been a great increase in crime in Florida and the administration of justice in South Florida is on the point of collapse. He indicated that he believes the INS budget should be increased so that it can enforce immigration laws. Regarding long-range solutions, Senator Chiles said he has introduced, with Senator Huddleston, a bill to reform the immigration laws. He believes we need to better control immigration, including limiting the total numbers admitted; create stronger employer sanctions than the Administration proposes and a noncounterfeitable social security card; and seal the border before considering amnesty for illegals.

3. Senator Huddleston indicated that he believes America has the right to determine who comes to this country and what procedures are established to integrate them. He questioned whether we couldn't consider a person as having not entered the country until he/she has gone through the adjudications process. He believes this approach is necessary in dealing with mass influxes of people. He also said it should be established that due process procedures for U.S. citizens should not necessarily be available for aliens. He believes that the most important part of any immigration policy is that the distinction between fear of punishment and fear of persecution be spelled out. He said "persecution" should be based on conditions that existed before the individual left his country, although this could be modified in certain exceptional circumstances. He indicated that this issue is addressed in S. 776, an immigration bill introduced by himself and Senator Chiles.

4. Mr. Civiletti presented principles he believes should be applied in any serious attempt to address mass asylum problems: (1) the U.S. should design its programs and policies so it is not a country of first mass asylum; (2) we should encourage processing prior to entry because it is particularly difficult for the United States to deal fairly and soundly with an irregular and sporadic flow of people claiming mass asylum; (3) the United States should adhere to the principle that asylum is for persecution as defined by the Refugee Act; (4) the law should provide for one fair and expeditious proceeding and perhaps a limit of one appeal on the record; and (5) those lawful entries who are here should be fairly supported, and since it is a national problem, the Federal Government should bear its share of the responsibility.

Questions: In response to questions from Senator Simpson, Senators Chiles and Hawkins addressed how moving Haitians from Florida might affect their due process rights and asylum proceedings. Senator Chiles commented on the unfairness of the current system. He said that few Haitians have been deported since 1978 and that they are getting more than their due process rights. He also said that the rights of those who wish to enter this country legally appear to be of less concern than those who enter illegally. Senator Hawkins said that judicial decisions and lawyers have slowed the asylum procedures by such actions as requiring individual hearings, interpreters, etc. She believes the role of lawyers in promoting delay in the Haitian proceedings should be investigated. She indicated that she believes due process could be obtained anywhere in the United States. Mr. Civiletti said that if the sole purpose of postponing hearings is delay, it is unethical. He also said that removing aliens from Florida for proceedings is not a failure of due process.

Senator Huddleston, in response to questions from Senator Simpson, indicated that he believes the definitions of "refugee" and "persecution" are good if they are modified to include the caveat that certain conditions had to exist in the home country before the person left. He added that he doesn't think the United States is applying the definitions consistently from one group seeking asylum to another.

Senator Simpson asked whether Cubans and Haitians dispersed to other areas of the United States would return to Florida in order to be with their families and colleagues, and whether this desire for family reunification would also encourage a continued influx of refugees coming to join those already here. Senator Chiles responded that the Haitians are now concentrated in Florida primarily because of the Court rulings there which have made the hearing process slow [and their chance of deportation less]. He said the Cubans have tended to concentrate in Florida because of the proximity to Cuba and the similar climates. Senator Hawkins pointed out that the United States can return Haitians to Haiti but that Cuba will not accept the Cubans. She believes reunification of families should apply only to immediate family members.

Mr. Civiletti made several points about the proposed interdiction program in response to questions from Senator Simpson. He said that interdiction at sea can endanger human lives; that the probable cause necessary to interdict is fairly substantial legally; and that when there is resistance to interdiction at sea, it makes the situation very dangerous physically and internationally. He believes interdiction can only be a partial solution, used with other deterrence techniques. Senator Hawkins suggested that escorting the boats home might be an alternative to interdiction. Senator Huddleston agreed that U.S. actions are sending a signal to the rest of the world and that the message has been that these people are unconditionally welcome, and that now it should be that refugee status is not automatic and procedures will be enforced. Senator Chiles also said that we have been sending signals that encourage people to flock here and that we can change those signals.

D. Hon. Robert McClory, U.S. Representative from the State of Illinois

Statement

Representative McClory said that the United States must address the issue of the status of the Cubans and Haitians already in the United States and adopt firm measures for handling future illegal migrations to this country. He pointed out that most of the Cuban/Haitian "entrants" have been resettled and that the United States cannot uproot them. He added that those Cubans who cannot be resettled in communities because they are disfunctional or antisocial should be returned to Cuba. He said that the illegal immigrants entering since October 1980 have no special status and should be given expeditious administrative hearings within the limits of court decisions. He said that to deter future flows, we must establish our credibility in terms of removing those who have no lawful claim to stay in the United States and that we must deal more firmly with Americans who illegally transport people to the United States. He suggested that other countries be encouraged to share in the burden of resettling those fleeing persecution. To prevent additional mass arrivals, he suggested that we obtain the cooperation of sending countries to prevent the initial departures; that we discourage passage through third countries of migrations headed for the United States; and that we facilitate joint efforts on the high seas to intercept illegal migrants. He also said that he believes INS must have resources in order to facilitate prompt determination of asylum claims. He believes a single appeal should be available in asylum cases and it must be conducted promptly and provide the final answer to challenges of excludability.

Questions: In response to questions from Senator Simpson, Representative McClory said that processing and screening should be done before refugees reach the United States. He said Southeast Asians are processed abroad and that there should be a way of doing that in the Caribbean. He further said that he believes the U.S. military should be used to interdict persons attempting to enter the U.S. illegally. Representative McClory indicated that he believes there is a role for the U.N. High Commission and the Intergovernmental Committee on Migration in helping provide a forum for bilateral and multilateral discussions. He favors the creation of a Western Hemisphere Council on Migration if it would induce Latin American countries to agree to try to resolve the problem of exploding populations in the Caribbean. He stated that programs that improve the economic status of Latin American countries might reduce the number of people wanting to leave those countries. He suggested that the Inter-American Foundation, which uses private funds to promote economic development, could possibly be expanded. He indicated that he doesn't think the definitions used for "refugee" and "persecution" should be expanded.

E. Hon. Shirley Chisholm, U.S. Representative from the 12th District of the State of New York

Statement

Representative Chisholm spoke in her capacity as chairperson of the Congressional Black Caucus Task Force on Refugees. She addressed the issue of the United States becoming a country of first asylum and U.S. asylum procedures, saying that the U.S. has relied on the political qualifications of those seeking asylum. Representative Chisholm addressed various Administration proposals: She indicated that streamlining asylum procedures would reduce Haitians' access to the courts. She said that interdication at sea was problematic and dangerous physically and internationally. She indicated that the United States has reason to believe the Haitians would be persecuted if returned to Haiti and that interdiction would violate the principle of refoulement as contained in the U.N. Protocol. She also opposed the renewable term entry card proposed by the Administration because it is confusing and unreasonably delays resolution of the Cubans' and Haitians' status; and she opposed the English language capability requirement. She pointed out that the Administration proposal makes no provision for Federal reimbursement to States and localities for social services for the entrants. She favored a policy suggested by an amendment to the Foreign Assistance Act of 1981 which ties all development assistance for Haiti to a responsible development program, an end to human rights abuses, and a reduction of illegal smuggling of persons into the United States.

Representative Chisholm recommended that those applying for mass asylum be treated as stateside refugees for the purposes of processing. She said the U.N. High Commission on Refugees could assist in the screening of these stateside refugees. She mentioned legislation she has reintroduced in this Congress to grant refugee status to Cuban and Haitian entrants and those Haitians who arrived in Florida as of May 18, 1981.

Questions: In response to questions from Senator Simpson regarding whether her bill might provide incentives for more persons from the Caribbean to enter the United States, Representative Chisholm said that she believes Haitians are not economic refugees. She also said that the United States couldn't absorb all the people who would come here on the basis of economic need. In response to further questions from Senator Simpson, Representative Chisholm indicated that the definition of persecution should not allow us to be selective about our human rights concerns in various countries. She indicated that during periods of economic stress, there is fear among those already in a country that newcomers will take away some of their opportunities and benefits. She said that she has observed that many of the newcomers take jobs below minimum wage, jobs that others wouldn't accept. She agreed that the hearing process in asylum cases should have one step for civil actions and one for appeal.

F. Public interest panel

1. Ronald Gibbs, Associate Director, National Association of Counties;
2. Dale F. Swartz, National Forum on Immigration and Refugee Policy;
3. Wells Klein, Executive Director, United States Committee for Refugees;
4. John Tenhula, Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service, and on Behalf of the Church World Service, National Council of Churches, and American Council of Voluntary Agencies.

Statements

1. Ronald Gibbs pointed out that county governments must deal daily with the effects of national immigration and refugee policies in such areas as housing, jails, schools, and hospitals. He said his organization supports: (1) contingency plans for handling future mass asylum, identifying a lead agency; (2) stronger measures to prevent a recurrence of the Mariel boatlift, proceeding cautiously in the area of interdiction on the high seas; (3) temporary detention of mass asylum applicants in Federal facilities generally outside of heavily impacted areas such as Florida, pending determination of their status, but releasing non-dangerous applicants into communities if the processing continues to take a long time; (4) development of placement strategies by the Federal Government for resettling mass asylees and reimbursement to States and localities for the cost of assisting asylum applicants; (5) extending to asylum applicants the same Federal assistance provided to refugees and asylees and Cuban/Haitian entrants; and (6) permitting Cubans and Haitians currently residing in this country as of July 1, 1981, to remain in the United States and to apply for permanent resident alien status after they have been here at least 3 years, with the repatriation of criminals, mentally ill, and those subject to exclusion on other grounds.

2. Dale Swartz indicated that the tension and backlash in Miami from mass asylum entries is affecting U.S. immigration policy and politics. He indicated that the Administration proposals will not solve immigration problems and that they represent a departure from the fundamental tradition and commitment of the United States to the rule of law, regardless of color or national origin.

3. Wells Klein indicated that his organization believes three fundamental principles must guide U.S. mass asylum policy: (1) the United States must have control and must appear to have control of the flow of people permanently entering; (2) the mass asylum policy must be consistent with what we ask of other nations; and (3) we must fully observe fundamental tenets of due process. He said that persons needing a temporary safe haven should not be confused with refugees seeking asylum on the basis of persecution. He also said that when persons move across a third country to

reach the United States, the third country should actually be the country of first asylum.

He proposed that mass asylum policy be based on the following guidelines: (1) accepting the obligation of being a country of first asylum and thus not interdicting at sea or pushing boats off our shores; (2) reserving the right to detain asylum applicants or permit them temporary access to our society; (3) recognizing that there are more people in the world who meet our definition of refugee than this country can accept; and (4) repatriating or relocating those who do not meet the test of a well-founded fear of persecution.

4. John Tenhula said that the United States has no policy or program for dealing with groups seeking asylum. He indicated that the processes used seemed to discriminate against the Haitians. He added that the handling of both the Cubans and Haitians has been detrimental to their welfare and has caused bad feelings in Florida and has been a drain on Florida social services and educational systems. He said that in this atmosphere the voluntary agencies have had difficulty responding to people who have immediate needs.

Questions: In response to questions from Senator Simpson, a general consensus was expressed that there is a need to expedite the hearings and appeal process in asylum cases. Mr. Swartz and Mr. Klein pointed out that this should not be used to justify unfair treatment or expediency under pressure.

Mr. Swartz, in response to questions from Senator Simpson, recommended that preventive measures, such as encouraging the U.N. to develop resettlement opportunites out of this country, be utilized so that all asylum applicants won't choose to come to the United States. Mr. Klein pointed out that U.S. processes have to be designed to facilitate resettlement in third countries. He added that the signals we send other countries are part of the pull factor toward the United States. Mr. Tenhula said we should look at the use of extended voluntary departure.

Senator Simpson asked how the panelists felt about applicants for asylum being resettled into communities pending determination of their status. Mr. Klein said the decision should be based on our ability to retrieve them from society, their ability to exist in society, and society's willingness and ability to accept them. Mr. Swartz discussed some of the problems detention creates. Mr. Tenhula spoke of the confusion and pain that comes to asylum applicants, sponsors, and local communites when resettlement is urged but no legal status is conferred. Mr. Gibbs said it is a question of equity, and that the backlash comes from what is done for U.S. citizens versus what is done for the people being resettled. He also said he thinks resettlement in areas other than those already overloaded should be explored.

Senator Simpson asked whether sponsors should be required to assume more responsibility and relayed Senator Grassley's question regarding whether precedures similar to those used in Iowa's refugee ressettlement program couldn't be used with Cubans and Haitians. Mr. Tenhula said that the 90-day work permits for asylum applicants has been an administrative burden that sponsors of refugees haven't faced. Mr. Klein said that voluntary agencies were under pressure to just move the Cubans and Haitians out of the camps. He said that national agencies may need to emphasize more back-up support for sponsors and that some new resettlement models are being developed. Mr. Swartz pointed out that the failure to resolve the status of the Cubans and Haitians resulted in confusion regarding institutional relationships and fiscal flow. Mr. Gibbs commented that no one has really defined what constitutes effective resettlement and he thinks that needs to be done.

In response to a question from Senator Simpson about the use of group profiles in asylum decisions, Mr. Swartz said that it depends on who is involved. He said that the State Department's attitude toward the Haitians, despite a Federal court ruling, is an example of how such decisions should not be made. Mr. Tenhula said that a variety of non-governmental organizations do yearly profiles.

III. SEPTEMBER 22, 1981, "ANNUAL REFUGEE CONSULTATION FOR 1982"

Hearing before the Senate Committee on the Judiciary.

Senator Alan Simpson (acting chairman of the committee) presiding.

Present: Senators Thurmond (R., S.C.), Simpson (R., Wyo.), Grassley (R., Iowa), Specter (R., Pa.), and DeConcini (D., Ariz.).

A. Opening statement of the acting chairman

Senator Simpson explained that the Refugee Act of 1980 requires annual consultation between the Executive Branch and Congress on refugee admissions. He said that after the consultation, the Judiciary Committee would forward its recommendations on admission levels for FY 1982 to the President. He said the Committee would also, as part of its oversight function, assess the effectiveness of the policies and procedures governing Federal refugee assistance. He indicated that he believes the United States must adhere to the statutory provisions limiting refugee admissions and emphasized that refugees are an international problem, requiring international solutions, and that the United States cannot accept for permanent resettlement all who flee their countries. He pointed out that refugee, "entrant," and applicant for asylum admissions have been far above the number established by the Refugee Act. He suggested that the United States might better assist in ways other than accepting these people for resettlement. Senator Grassley said he supported these concerns. The statements of Senators Kennedy and Heflin were entered into the record.

B. Administration panel

1. Statement and questioning of William French Smith, Attorney General of the U.S. accompanied by Doris Meissner, Acting Commissioner, Immigration and Naturalization Service (INS)

Attorney General Smith described how the Refugee Act of 1980 changed the procedures for admission and resettlement of refugees. He said the Administration's proposals in this area were the product of intensive inter-agency consultation. He indicated that the current U.S. admissions program includes alternative means of resettling refugees before they are admitted to and resettled in the United States, including voluntary repatriation to a refugee's country of origin, resettlement in a country of first asylum, and resettlement in a third country other than the United States. He said the admissions program also serves U.S. humanitarian and foreign policy interests. He indicated that family reunification is a major factor in selecting refugees for admission to the United States. He said the President was recommending the admission of 173,000 refugees for resettlement in the United States for fiscal year 1982, as follows: Soviet Union—33,000; Eastern Europe—9,500; Latin America—2,000; Africa—3,000; Near East—5,500; Asia—120,000. He described the circumstances affecting the number of admissions requested for each group. He indicated the mass asylum entries, "to a large extent involving questions of illegal immigration under the cover of application for asylum," would be addressed by the Administration separately in legislative measures. He described how refugee admissions are determined in practice, pointing out that each refugee application is analyzed individually by an INS officer. He said that the officers rely heavily on views of the Department of State (DOS) regarding factual determinations in the cases. He said the domestic impact of admission levels have important budgetary implications for all levels of government and that, for this reason, proposed admission levels have been set as low as possible.

Senator Thurmond stated that the influx of refugees to the United States has always been a difficult problem, requiring a balance between welcoming foreigners and recognizing that we cannot take all who want to come. He indicated that he believes the definition of refugee must be limited to that in the Refugee Act and that political persecution, within the definition, must be clear and ascertainable by U.S. officials. He said the United States must develop a better policy for finding other countries who will accept the refugees and diplomatic methods of returning them to their country of origin. He said the DOS should take a stronger role in using foreign policy objectives to address the problem of refugee admissions. Finally, he indicated that he believes the positions of refugee coordinator in the DOS and commissioner of INS should be filled by the Administration and that these vacancies may have contributed to the delay in developing a viable refugee admissions policy.

Senator Simpson questioned the status of budget restraints on INS and Attorney General Smith indicated that he believes the efficiency of the operation could be substantially improved through management and organizational changes.

In response to questions from Senator Simpson regarding the Administration's policy regarding resettling refugees who have offers for resettlement in other countries but perfer to come to the United States, such as with Soviet Jews and Israel, Attorney General Smith indicated that generally in such cases we would insist the refugee go to the other country, although we do admit some Soviet Jews under these circumstances. Senator Simpson questioned whether the language in the law might better read that the Attorney General may admit to the United States any refugee who is "not accepted for permanent resettlement in any foreign country" instead of "not firmly resettled in any foreign country."

In response to questions from Senator Simpson regarding the use made of some refugee categories, Attorney General Smith said that to be admitted under the family reunification category the person must also have refugee status and it thus has not resulted in large numbers of entries. He said that generally the admissions have not equalled the number of authorized positions. He said that the "otherwise of national interest" category has not been used to bring in additional refugees to reach the consultation figure.

Senator Simpson asked about the procedures for determinations on deferred refugee applications and Attorney General Smith stated that INS would be applying the definition of refugee as set forth in the Department of Justice Office of Legal Counsel memorandum. He indicated that he believes INS officials, rather than State Department consular officers, would be the most appropriate persons to make the determinations.

2. *Statement and questioning of Walter J. Stoessel, Under Secretary for Political Affairs, DOS, accompanied by James N. Purcell, Acting Director, Bureau for Refugee Programs, DOS*

Mr. Stoessel indicated that the State Department's responsibility in the development of the Administration's proposals regarding refugee admissions was to ensure that foreign policy objectives received proper consideration. He said that the United States assists refugees in part because large refugee populations can threaten the stability of countries where they first seek asylum. He said granting first asylum provides time for the development of humane solutions, including voluntary repatriation, settlement in the region, or resettlement in third countries. He said U.S. support of international cooperation in refugee situations has reassured countries of first asylum that their "plight would not be ignored by the international community." He said he believes that a precipitous decrease in U.S. support could lead to an unraveling of the international system. He said the United States has established criteria and priorities to help determine which refugees should be admitted to the United States, including those of special humanitarian concern, those seeking family reunification, and those whose admission is deemed in the national interest. He reviewed the foreign policy considerations in the Administration's proposals on refugee admission levels.

In response to questions from Senator Specter, Mr. Stoessel indicated that the admissions number for the Western Hemisphere is low because many neighboring countries are willing to provide asylum and that, in some cases, people are fleeing for economic reasons and would not be persecuted if returned to their country of origin. Mr. Purcell responded to questions regarding plans for Haitians who are coming to the United States by stating that they generally believe Haitians are coming here for economic reasons but that once they are in this country they can request asylum and their cases will be considered individually. Mr. Stoessel indicated that they are studying ways to avoid another mass Cuban influx.

Senator Specter asked about the small number of refugee admissions proposed for Africa, and Mr. Purcell said that Africans have generally attempted to handle refugee problems within the region. He said the United States has pledged $285 million over the next 2 years to assist African refugees. He said they believe the 3,000 proposed for Africa is consistent with the goals of African nations

Senator Specter asked what efforts the DOS has in mind to get the Soviet Union to "live up to their commitments under international humanitarian laws" and Mr. Stoessel indicated that they constantly bear it in mind during both bilateral and multilateral dealings with the Soviets. He said that Secretary of State Alexander Haig would be discussing the matter with Minister of Foreign Affairs, Andrei Gromyko, but that the issue hasn't been linked to the sale of grain to the Soviet Union. However, he said that the Soviet Union has been denied most-favored nation treatment because of the emigration question. He said that it has been argued that the Soviet Union's stance on the question is linked to the nature of the relationship between them and the United States.

Senator Simpson questioned the rationale for admitting the recent Indochinese refugees who had no contact with the American government abroad and Mr. Purcell said that although many flee for economic reasons, it is generally a mixture of economic and political. He said they would be reviewed on a case-by-case basis.

3. Statement and questioning of David B. Swoap, Under Secretary, Department of Health and Human Services, accompanied by Phillip Hawkes, Director of the Office of Refugee resettlement (HHS)

Mr. Swoap indicated that some of the domestic policy considerations underlying the Administration's proposed level of refugee admissions for fiscal year 1982 included the support of the American people and U.S. ability to adequately address the needs of the refugees who have already come to the United States.

He said that approximately 373,000 refugees came to the United States in the past 2 years and that number hampered refugee resettlement. He said two other factors affecting the problem of refugee resettlement in the United States are the ability of a given refugee population to attain self-sufficiency and the location of the initial resettlement. He said efforts are being made to decrease dependency of the refugees and to achieve a "more equitable distribution of refugees throughout the United States. * * *" He described the cash and medical assistance and social services programs administered by HHS and how the Department plans to use funds in these areas. The fiscal year 1982 budget request for cash and medical assistance is $469 million; the fiscal year 1982 request for social services programs is $70 million. He said they will give priority to services that promote self-sufficiency; channel most of the social service funds to the States; increase the role of regional offices in providing technical assistance to States; and explore case management proposals.

He described how the Refugee Act "enhanced the Department's ability to administer the domestic components of the refugee program," including the requirement that States submit plans outlining how they propose to use Federal funds and the requirement that States appoint a State refugee coordinator who provides a focal point for the Department's monitoring of various resettlement programs. He pointed out that, beginning in April 1981, special Federal cash and medical assistance for refugees was limited to their first 36 months in the United States. He said they are considering modifying the regulations governing cash assistance for non-

AFDC eligible refugees but that no decision had yet been reached. He said the refugee resettlement program needs greater communication and coordination at all levels between program participants and that they have been working to meet this need.

In response to questions from Senator Simpson, Mr. Swoap indicated that HHS is able to track individual cases to determine which have outside incomes. He said the dependency rate of Indochinese refuges has been rising, from about 29.8 percent in 1976 to 45.4 percent in 1980. He said that a recent preliminary survey shows the rate may now be in the area of 67 percent. He said they are attempting to reduce these rates, including encouraging use of self-sufficiency training programs. He indicated that the social services money that funds these programs are not being reduced from the level contemplated by the Carter Administration and that the $70 million requested for fiscal year 1982 would be adequate.

Senator Simpson asked about the national demonstration projects and Mr. Hawkes indicated that the studies are just beginning and that they do not have any data yet. He speculated that some data will be available in a few months. Mr. Swoap said that accelerating English language training and employment search and placement skills will be explored in some of the demonstration projects. In response to questions from Senator Simpson regarding secondary migration, Mr. Swoap indicated they are working with voluntary agencies to address the cluster placement problem and they are looking at the availability of social services funding and employment counseling to try to target them to secondary migration areas.

Senator Simpson questioned how refugee programs will be affected by shortfalls in cash and medical assistance funds, and Mr. Swoap responded that there would not be much impact in fiscal year 1981 and that the President's decision on the mid-year review would affect what happens in fiscal year 1982.

Senator Simpson questioned whether there was any feeling that the mission of the Office of Refugee Resettlement (ORR) was diminished by being placed under the Social Security Administration (SSA) and Mr. Swoap indicated that he did not believe it had lessened the importance of the office.

In response to questions from Senator Simpson, Ms. Meissner said that when a person could be admitted as either a refugee or immigrant under family reunification provisions, the refugee status is usually favored.

C. Panel

1. Charles Sternberg, Chairman, Migration and Refugee Affairs Committee, American Council of Voluntary Agencies, Accompanied by John Tunhula, Policy Representative, Church World Service of the National Council of Churches; Bruce Leimsidor, Administrative Staff, Hebrew Immigrant Aid Society; and Jan Papanek, American Fund for Czechoslovak Refugees;
2. John McCarthy, Executive Director, Migration Services, U.S. Catholic Conference.

Statements

1. Mr. Sternberg indicated that his organization believes the government should try to deal with refugee problems without reducing the number of refugees admitted to the United States. He said that they support the use of broader regional definitions for refugee admission levels, so that those from the many areas of the world which are currently omitted would be eligible to apply. He said they believe the "primary factor in controlling public assistance dependence in facilitating early employment of refugees" is a mechanism for proper case management within the community resettlement program.

2. Mr. McCarthy indicated that the Conference supports returning the refugees to their country of origin "if it can be done safely;" resettling them where they are; and as a last resort, resettling them in third countries. He said his organization has offices in every community where they resettle refugees. They attempt to make refugees self-sufficient as soon as possible.

Questions: In response to questions from Senator Simpson, there was discussion by Mr. Sternberg, Mr. McCarthy, and Mr. Tenhula regarding the goals and practices of resettlememt. They indicated that there are numerous sponsors willing to accept refugees, that refugee relatives who are receiving welfare were not to be considered sponsors, and that a primary focus of the resettlement process is employment. Mr. McCarthy emphasized the need for cooperation between the public and private sectors, indicating that when public benefits and educational and job training programs are shoved at the refugees, it is difficult to concurrently focus on employment. He said they would like to have control of their cases. Mr. Sternberg described efforts that have been made to improve communications with State and local communities and government where the refugees are being resettled.

In response to questions from Senator Simpson, Mr. Sternberg said that although the training efforts in refugee camps in Southeast Asia are helping incoming refugees, additional job skill training is also important. Mr. McCarthy said that they believe it is cost-effective to work with the refugees overseas rather than in the United States.

Senator Simpson asked the number of refugees who immediately apply for public assistance and Mr. Sternberg said that the resettlement allotments are so low that it is difficult to "keep a refugee off welfare for an extended period of time." Mr. McCarthy indicated that if the voluntary agencies had case control, they would be able to better determine who should be getting public assistance and there would be fewer on welfare. Mr. Leimsidor added that frequently the voluntary agencies are not notified when a client goes on public assistance. He said that the Refugee Act mandates consultation with the vocational service provider and notification of the sponsor when the refugee goes on public assistance.

Senator Simpson asked what the voluntary agencies are doing about avoiding secondary migration, and Mr. Sternberg and Mr. Leimsidor indicated that although the voluntary agencies want to discourage such secondary migration, people are free to move where they want. They suggested that the Cambodian cluster project might provide data on how to prevent secondary migration.

In response to questions from Senator Simpson on the compensation given voluntary agencies for assisting refugees, Mr. Sternberg said that such per capita grants have not resulted in the agencies' advocating higher refugee admissions. Mr. Leimsidor said that those funds facilitated the agencies' work but did not cover the costs. Mr. McCarthy said resettlement costs about $1,100 per refugee. Mr. Sternberg indicated that present refugee programs have a strong foreign policy component; they were government initiated and the voluntary agencies were asked to help. He indicated that resettlement of mass numbers, with policy implications, would not be feasible without Federal financial support.

D. Panel

1. D. Robert Graham, Governor of Florida, and Chairman, International Trade and Foreign Relations Committee, National Governors Association;
2. Harvey Ruvin, Commissioner of Dade County, National Association of Counties (NACo), Accompanied by Ronald Gibbs, Associate Director (NACo).

Statements

1. Governor Graham said the willingness of State and local governments and the public to continue to support the refugee program is "increasingly dependent upon confidence that Federal responsibilities will be met." He said that the number of refugee admissions should be linked to the domestic assistance budget and to the Federal Government's willingness and ability to control undocumented entries. He emphasized that refugees are a Federal responsibility. He said that States are expected to deal with the impact of refugee resettlement, yet have often been excluded from the process. He cited the impact on Florida of the Cuban-Haitian influx. He pointed out that States and localities face increased State and local taxes and a reduction in domestic programs as well as possible reductions in Federal assistance for refugees, while "they have not yet seen a single step towards implementation of the Administration's immigration and refugee policy announced on July 30."

2. Mr. Ruvin indicated that Federal responsibility should go beyond making admissions decisions and should include responsibility for the cost and impact on the communities in which refugees resettle. He pointed out that during the initial period of resettlement, refugees have greater costs than most Americans and that this burden falls on the relatively few States and localities in which they are concentrated. He illustrated the impact of refugees and the Cuban-Haitian entrants on Dade County. He said his organization believes it is unfair to expect a few heavily impacted areas to bear the burden of resettling refugees, "especially in light of the fact that State and local governments have no voice in Federal decisions on refugee admissions and placements." He indicated that the capacity of communities to absorb additional refugees has not been taken into account. He said this has led to both a growing welfare dependency rate and to community tensions and resentment. He

said he believes there is a need for improved administration of refugee reception and placement grants. He also said they support the transfer of refugee programs from the DOS to HHS.

Questions: In response to questions from Senator Simpson, Governor Graham indicated that they are willing to consider changes in the type of funding provided for refugees. Mr. Ruvin said that they probably need a combination of both impact aid and per capita fundings.

Senator Simpson asked how the private sector could be more efficiently used in refugee resettlement and Governor Graham indicated that he believes the greatest concern is that it be a national program with the necessary support from the Federal Government. Governor Graham said and Mr. Ruvin agreed that dependency rates could be reduced by greater dispersal of the refugees. Mr. Ruvin added that other factors affecting dependency rates include that recent entries have fewer skills and less education than earlier entries and that some of the sponsors are also refugees. Mr. Ruvin said that he believes communication between voluntary agencies and State and local officials is poor.

In response to questions from Senator Simpson about whether 3-year, 100 percent Federal reimbursement for cash and medical assistance reduced the incentive of States and counties to encourage refugee self-sufficiency, Mr. Ruvin said that he did not believe so, that the refugees have need for assistance.

Senator Simpson asked whether the proposed budget figures appeared adequate for proposed refugee admissions and Governor Graham indicated that the budget figures consider only those who enter the country under the controlled system and that many others, such as the Cuban-Haitian entrants, actually enter the country outside the system. He said he believes the proposed admissions are roughly twice what the budget would realistically support when illegal entries are also considered. He said he believes the Federal Government should assume the responsibility to supply the financial resources for those they allow to enter.

E. Panel

1. Gretchen Brainerd, Intergovernmental Committee on Migration (ICM);
2. Patricia Weiss-Fagen, Chairman, Refugee Program, Amnesty International, USA;
3. LeXuan Khoa, Deputy Director, Indochina Refugee Action Center, Accompanied by Neou Sichantha, Association of Cambodian Survivors, Yilay Chaleunrath, Lao Community, Cheu Thao, Lao-Hmong Community, Nguyen Van Hien, Vietnamese Community;
4. Roger Connor, Executive Director, Federation for American Immigration Reform (FAIR).

Statements

1. Ms. Brainerd said she would focus on how to facilitate greater burden sharing in the international arena and how to define the U.S. role in this area. She discussed the development of ICM and the U.N. High Commission on Refugees and how they work together. She said that these international mechanisms are "improperly

or inadequately used" and the "roles of the separate entities are often blurred." She added that the support of governments is often ad hoc and emergency situations are dealt with in different ways. She said the U.S. role has weakened recently because of preoccupation with domestic immigration concerns. She indicated that refugees and migrants are human resources rather than humanitarian burdens and that more attention should be given to the linkage between migration and refugee resettlement and economic development. She urged better coordination among nations concerned with humanitarian assistance programs. She recommended the need for: comprehensive review of roles and missions of international organizations; review of the U.N. system since "refugee and migrant-producing countries are members and influence policy;" clear delineation of agency responsibilities; a neutral, non-political focal point in every refugee emergency; and more attention to linkages between resettlement and development.

2. Ms. Weiss-Fagen presented three principles Amnesty International believes should guide refugee law: no one should be returned to a country where they will be persecuted; refugees from all countries are essentially equal and should be accepted on the basis of humanitarian need and not political expediency; and U.S. refugee law should include persons who are still in their own countries. She said recent practices and proposals by the U.S. government question the continuing acceptance of these principles. She said the situation of Haitians and El Salvadorans in the United States demonstrates that each person requesting refugee status is not being given equal opportunity to present and have a fair hearing of his/her case. She indicated that the United States appears to be moving to substantially diminish the opportunities afforded those seeking refugee status to contact support groups. She described the interdiction program as highly conducive to coercion and motivated at least in part by racism and strongly recommended a review of the interdiction proposal "to ensure adherence to the minimum criteria established by the international community for asylum procedures." She recommended a formal role for the U.N. High Commissioner for Refugees in refugee and asylum procedures in the United States and the establishment of an asylum review board composed of "representatives of the U.S. government agencies with responsibility in refugee matters and refugee-oriented, non-government and international organizations."

3. Mr. Khoa stated that Indochinese have never before, "even during periods of intense starvation and economic hardship, chosen to flee their homelands." He indicated he felt it was "inaccurate, cruel and demeaning" to suggest they would take the risks they do to leave their countries for economic betterment. He said the refugees want to be independent and that the welfare dependency rate is temporary, a tool to sustain families while they adapt and develop needed skills. He said recent studies indicate that over the long run, refugees approach employment levels comparable to the general U.S. population. He suggested that refugees have not been made full and equal partners in efforts to implement effective refugee resettlement policy and programs and that the Federal Government has not fostered a more specific partnership and division of labor between public and private institutions. He pledged that they

would make "every effort to assume an increasing share of responsibility in the resettlement of our own people."

4. Mr. Connor said the signs such as conflict between different levels of government over who should pay for refugees and the impact on communities indicate that our emphasis in refugee programs has been misdirected and the number of refugees admitted to this country is too high. He said the Federation believes levels of actual admission should be reduced and refugee assistance should be directed toward repatriation and resettlement in countries of first refuge and "to better internationalize the resettlement of those who must come to third countries." He indicated that if social welfare programs for refugees are reduced, the number of admissions must be reduced so that the United States can keep its commitment to those admitted.

Questions: In response to questions from Senator Simpson, Mr. Khoa indicated that there are over 500 mutual assistance associations and only 22 receive funding from the government. He said he believes such groups could be among the most helpful in resettlement and that they were not being fully utilized.

In response to questions from Senator Simpson, he said repatriation of Southeast Asians is condemning them.

Senator Simpson asked what suggestions they had to better manage migration issues in the Western Hemisphere and Ms. Brainerd said ICM has advised many Latin American governments on labor migration questions and they are currently involved with OAS in a study of cross-border labor migration problems in Latin America. She said they would welcome requests from member governments to do more. She gave examples of earlier attempts to establish "a viable community economic base in non-traditional receiving countries" and indicated that such efforts have not been attempted in recent years.

Ms. Weiss-Fagen, in response to questions, suggested that the refugee admissions process could be improved by use of a refugee review board composed of U.S. government departments and members of the international community, including UNHCR. In response to further questions from Senator Simpson, she indicated that she didn't believe it was feasible to continue resettling refugees from the Western Hemisphere outside the United States. She pointed out that several of the former receiving countries are restricting such entries. In response to questions from Senator Simpson, Mr. Connor said he believes the support for refugee admissions to the United States is diminishing among U.S. residents.

In response to questions from Senator DeConcini, Mr. Khoa listed the things they believe would improve the sponsorship process, including encouraging greater responsibility of "anchor" refugee families; enforcing eligibility requirements for refugees requesting cash assistance; fostering economic development within refugee communities; using magnet placement strategies; resettling in less-impacted locations; and packaging initial services to improve their effectiveness. He suggested separating cash and medical assistance benefits for refugees. He indicated that he thinks the Iowa resettlement program is a good model. He said he believes the States should be more involved in resettlement activities and that the private sector should be encouraged to help the government support refugee resettlement.

Ms. Brainerd responded to questions from Senator DeConcini about internationalizing Cuban resettlement. She indicated that the international response was unfavorable because of the negative reports regarding the nature of the Cubans. She indicated that the Cubans have been resettled in Australia, Argentina, Venezuela, Costa Rica, and Peru, as well as in the United States. She said she would supply for the record the conditions found in the camps in Peru and Costa Rica.

In response to questions from Senator DeConcini, Ms. Weiss-Fagan indicated that U.S. refugee practice is inconsistent, seeming to "reflect foreign policy considerations rather than straight-forward legal or humanitarian concerns." She said the United States should be careful that potential refugees are given a fair hearing and all the rights they are entitled to under law. She said that it is Amnesty International's position that anyone who has a well-founded fear of persecution should be able to leave that country. Senator DeConcini asked if the United States is an international leader in refugee matters and Ms. Brainerd indicated that we do not accept more refugees than Canada or Australia on a per capita basis but that in overall numbers we fill a leadership role. Mr. Conner said the U.S. role should be considered in terms of its acceptance of immigrants as well as refugees and that "our performance in providing money for resettlement assistance out-performs other countries."

IV. SEPTEMBER 30, 1981, "HEARING ON EMPLOYER SANCTIONS"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (Chairman of the Subcommittee), presiding.

Present: Senators Simpson, Grassley, Kennedy, and DeConcini.

A. Opening statements by Senator Simpson and Senator Kennedy

Senator Simpson began the hearing by stating that the enforcement of the immigration laws was in the national interest, and that he believed that such enforcement would not be achieved without employer sanctions. In his opinion, the principal cause of illegal immigration was the availability of U.S. jobs, and the reduction of this availability, rather than greatly increased conventional border and interior enforcement, was the best approach to curtailing illegal immigration.

In his prepared statement, Senator Kennedy, the ranking minority member, indicated his belief that real questions remained over the costs and benefits of employer sanctions, and that a more appropriate step would be the effective enforcement of existing laws, including labor, social security, and civil rights laws. In his opinion, enforcement of these laws would reduce employers' incentives to hire illegal aliens, as well as protect them and the American labor market.

B. Administration panel

1. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service (INS), Department of Justice; accompanied by David Hiller, Special Assistant to the Attorney General;
2. Malcolm Lovell, Jr., Undersecretary-Designate, Department of Labor;
3. The Honorable Diego Asencio, Assistant Secretary for Consular Affairs, Department of State.

Statements

1. Doris Meissner, the Acting Commissioner of INS, stated that, in addition to efforts to intercept illegal aliens at the border, the policy of INS over the past several years had been to emphasize interior investigations aimed at locating illegal aliens who are employed, particularly in jobs which would be attractive to U.S. workers. Of the more than 143,000 illegal aliens apprehended in internal investigations in 1980, 46 percent were employed. She subsequently indicated that more than 60 percent of the people apprehended were in jobs that pay more than the minimum wage.

Ms. Meissner indicated that employer sanctions would increase the effectiveness of INS' interior enforcement efforts, particularly since she believed that as many as 75 percent of U.S. employers would comply voluntarily. Senator Simpson said later that he thought 75 percent was a minimum figure. This was based in large part on INS experience with Operation Cooperation, a voluntary compliance program involving approximately 60 companies in Los Angeles and Denver, and 60,000 employees. Ms. Meissner said that the Administration's employer sanctions proposal would allow INS to target its interior enforcement efforts at those employers suspected of not being in compliance. Employers would be charged with knowing violation when there was no attempt to determine eligibility, if they rehired previously apprehended aliens, and where there was clear evidence of a conspiracy between the employer and employee in fraudulently executing the eligibility form.

2. Malcolm Lovell noted that there was a universal consensus that the illegal flow of aliens into the United States is principally a labor market phenomenon, a movement of Third World workers drawn to our labor market by the wage disparities and employment opportunities. He briefly reviewed the 30 year old series of recommendations in favor of employer penalty legislation, as well as the history of illegal immigration in the early 1950s during the bracero program and the "second, even larger-scale influx" during the last decade. He stated that the employer sanctions proposal was a cornerstone of the Reagan Administration's proposals to curtail illegal immigration.

3. Diego Asencio stated that "the employers sanctions proposals is the heart of the resolution of the illegal alien question," and that the other alternatives—massive border controls or deportations—were " completely inconceivable" from a foreign relations point of view. Mr. Asencio said that most other industrialized nations, particularly in Western Europe, have internal controls over the employment of aliens, and also waive the visitor's visa requirement, which he recommended as a complementary approach. He noted

also that internal controls would reduce the strain on consular officers abroad.

Questions: Senator Simpson explored the possible alternatives to employer sanctions, including increased enforcement of existing labor laws, and increased border and interior enforcement of the immigration law. Mr. Lovell indicated that increased enforcement of the wage-and-hour laws would not deal with the problem because "the vast majority" of illegal aliens were working in jobs which paid at least the minimum wage. Regarding increased border and interior enforcement, Ms. Meissner said that "there is no question that border enforcement is cost effective and is legally probably the most efficient way of deterring illegal immigration," but that a variety of ways of dealing with the flow was needed. She said the currently available tools for interior enforcement were "simply not sufficient."

In a related question, Senator Simpson asked for an educated guess of the number of illegal aliens who initially entered legally on temporary visas and subsequently violated their terms. A survey of consular posts conducted by Mr. Asencio indicated that less than 2 percent of the 7 million nonimmigrants issued visas annually, or approximately 140,000, might be visa abusers. Ms. Meissner stated that INS figures showed a nonimmigrant nonreturn rate of 10 percent, which again may or may not reflect visa abuse. She said that close to 20 percent of the people apprehended in the interior were visa abusers, but that it was difficult to extrapolate from this figure because of the target of INS enforcement efforts.

There was some discussion about the identification to be required of workers in connection with employer sanctions. Ms. Meissner said there would be a significant increase in the use of fraudulent documents by illegal aliens. Senator Simpson said that he thought it was necessary both "to protect the earnest employer [attempting to comply with the law] and to do it in a way that would actually have the effect of screening out illegal aliens," and that the Administration approach did only the former. In a related discussion, Senator Grassley criticized the Administration's approach as "timid," in ducking the controversy surrounding a counterfeit-proof work permit or social security card, and "half-hearted," in that he did not think that it would get the work done. Ms. Meissner replied that cost, estimated at close to $2 billion, and start-up time, estimated at 3 to 5 years, had been the principal factors in the Administration's decision against such a card.

In response to questioning by Senator Simpson, Mr. Asencio indicated that Mexico's response to the Reagan Administration proposals had been "ambiguous," and questioned the "safety valve" theory, noting that many of those who left Mexico were people the Mexican government would prefer to remain. Mr. Lovell was questioned by Senator Simpson about experience with the Farm Labor Contractor Registration Act, which penalized the use of illegal aliens by farm labor contractors, and responded that about 9,300 undocumented aliens had been apprehended under it during the 4-year period 1978–1981 (9 months), and about 50 percent of the violations had been considered to be knowing violations.

Senator Kennedy questioned Mr. Lovell in some detail about the potential for discrimination under an employer sanctions law, particularly in view of the cut-back in labor law enforcement under the current Administration. Mr. Lovell responded that there was worse discrimination under existing conditions, and indicated that it was his intention that existing labor protection programs would operate more efficiently than in the past.

In response to Senator DeConcini's question about the extent to which the Administration had relied on the work of the Select Commission on Immigration and Refugee Policy, Ms. Meissner replied that it was a central element, and their report was "the basic primer document that everybody on the task force read and reviewed." She noted that while there were differences, there were some striking similarities in the two sets of proposals. Senator DeConcini also expressed fear of a backlash unless legislation was enacted soon in this area.

C. Hon. Harrison Schmitt, U.S. Senator From the State of New Mexico

Senator Schmitt stated that New Mexico shared an 180-mile border with Mexico, and the resolution of the problem associated with undocumented aliens in general and those from Mexico in particular was one of his priorities. While he believed that we must regain control of our borders, he opposed penalizing employers who knowingly hire illegal aliens on the grounds that it would do more harm than good. He believed that employer sanctions wouldn't stop the illegal Mexican migration, and that it would cause economic chaos, particularly for small businessmen, and foster continued discrimination against minorities.

In Senator Schmitt's view, the Mexican migrants come temporarily and primarily perform unskilled seasonal labor; they do not displace U.S. workers because they take jobs Americans do not want.

Senator Schmitt emphasized his belief that labor availability, not pay, is the issue. He indicated that the solution to the problem of undocumented workers lay in maintaining a mutually beneficial free flow of labor through the adoption of a temporary legal guest worker program that meets the need for additional low skilled labor, in place of our current illegal guest worker program. This was the purpose of his bill, S. 47, the United States-Mexico Good Neighbor Act. He saw this as a short-term solution, the long-term solution being the rapid economic development of Mexico and other Western Hemisphere countries to alleviate the pressures which drive the aliens north to seek jobs.

In response to questioning by Senator Kennedy, Senator Schmitt indicated that the Hispanics in New Mexico were concerned about discrimination under the Administration proposal. He also indicated that in New Mexico, at least, it appeared that almost all the workers were paid the minimum wage or higher. He reiterated that, "the minimum wage issue is not the principal issue. The principal issue is whether labor is going to be available at the time during the season when labor is required."

D. Lawrence Fuchs, Jaffe Professor of American Civilization and Politics, Brandeis University, formerly executive director of the Select Commission on Immigration and Refugee Policy

During the testimony and questioning, Mr. Fuchs covered many aspects of immigration, focusing on the recommendations of the Select Commission on Immigration and Refugee Policy. He indicated his support for an employer sanctions law in combination with a reliable, secure, and acceptable identification system, and in conjunction with a strong legalization program. He found the Administration's proposals in these areas deficient and suggested that both the amnesty and the employer sanctions proposal would complicate rather than contribute to effective enforcement.

Senator Simpson's questioning focused primarily on the identification issue. Mr. Fuchs said that it would take from 5–7 years for a single-use employee eligibility system to be fully operational, and that one could begin by phasing in a more reliable system for the 16–35 age group, which is most suspect in terms of illegality. In the meantime, he recommended an interim application of the affidavit system, noting that its problems as a long-term solution were that it was not effective in the secondary labor market and lent itself to more discrimination compared to a more reliable system.

Mr. Fuchs also answered the arguments which had been made against employer sanctions coupled with a more secure identification system on the grounds of civil rights, civil liberties, and cost, noting in each case that the benefits would most likely outweigh the costs of continuing with the status quo. In response to subsequent questioning by Senators Simpson, Grassley, and DeConcini, Mr. Fuchs indicated disapproval of an employer sanctions law by itself, and stressed the importance of legalization as a means of getting information about the sources and make-up of illegal migration.

E. Labor panel

1. Rudy Oswald, Director, Department of Economic Research, AFL–CIO;
2. Stephanie Bower, Coordinator, Legislative Department, United Farm Workers (UFW).

Statements

1. Mr. Oswald commented on the adverse impact of illegal immigration on U.S. labor, and indicated the AFL–CIO's strong suport for employer sanctions as the cornerstone of a coordinated, humane immigration policy. He stated that the Reagan Administration's proposals do not go far enough. AFL–CIO supports penalties of up to $1,000 per worker per day and injunctions backed by criminal contempt penalties for repeat violators. It opposes the exclusion proposed for employers of less than four workers.

Mr. Oswald indicated that AFL–CIO supports employer sanctions in concert with "a viable identification system and effective border controls." Regarding identification, they are willing to accept the Administration's recommendation as an interim measure, but they believe we must have "a permanent, counterfeit-proof identification system such as an impoved, secure, counterfeit-proof social security card," so that employers may have a real means of identifying illegal aliens. Mr. Oswald also stressed, as he did in subsequent questioning, that such a card should be permanent and not susceptible to government withdrawal as in some European systems. Like Mr. Fuchs before him, he suggested that the benefits would outweigh the costs, noting that the cost to the U.S. Treasury of one million unemployed, or one percent unemployment, was $30 billion.

2. Ms. Bower stated that there has always been an oversupply of farm labor, and that illegal aliens took jobs and were used as strike breakers. She indicated the UFW's support of stronger employer sanctions than those proposed by the Administration, recommending that the fine be raised to $1,500 per worker per day. She particularly stressed the need for enforcement, noting that "laws covering farm workers have rarely been enforced." She supported a counterfeit-proof social security card for identification purposes, indicating also that both the social security system and the farm workers would benefit from the latter's inclusion in the system. She opposed limiting employer sanctions to employers of four or more, stating that UFW supported the right of domestic workers to organize. She also said that UFW would like to see an expanded program for economic development in the countries from which illegal aliens come.

Questions: Senator Simpson questioned both witnesses on their views on the Farm Labor Contractor Act (FLCRA), and both indicated it had been inadequately enforced. Ms. Bower also stated that their workers went through hiring halls and UFW did not believe that "labor contractors should be in the picture at all." In response to another question, Mr. Oswald stated that increasing the number of Labor Department and INS investigators would not in and of itself eliminate the draw for illegal aliens, although he believed INS did need more manpower.

Senator Simpson discussed the issue of worker identification at some length with Mr. Oswald, who supported the Administration's proposal to rely on existing documents only as an interim approach while a secure system was developed. He suggested that the W-4 form, currently filled out by employers of new hires, could be amended by a notation of employment eligibility.

Senator Simpson questioned Ms. Bower about the impact of illegal aliens on farm workers, which she described as "very detrimental," as well as—in the Senator's words—the "myth that there are not sufficient people in America to do these menial jobs." In a related point, Mr. Oswald subsequently stated that there were high levels of unemployment in most of the areas where illegal aliens were prevalent. The State of Wyoming was one of the few places where there was no labor shortage, according to Senator Simpson, because of the energy boom there.

Mr. Oswald noted that their studies showed that the majority of illegal aliens—60 percent or more—were paid well above the minimum wage, but that in many cases this was below the prevailing wage. In two subsequent related points, he noted that "the minimum wage in the United States only applies to approximately 5 percent of all workers," with the other 95 percent paid above the minimum wage and thus vulnerable to being undercut in their overall wage and working conditions by illegal aliens working for less. He also reiterated that enforcement of labor laws alone was not sufficient because they only deal with "massive deviation" from the minimum standards of wage and hours.

Senator Simpson noted that another popular misconception was that the vast majority of illegal immigrant were Hispanics, when in fact figures showed that that figure is 50 percent or less. He questioned Ms. Bower about fear of discrimination in her union, and both she and Mr. Oswald emphasized the need for an identification system which was applied equally to everyone, regardless of their ethnic background. Senator Simpson concurred strongly with this point.

In closing, Senator Simpson commented on what he saw as "the greatest misperception" of this issue, that illegal aliens took jobs U.S. workers would not do. During the course of the questioning, he said that the Subcommittee has received figures indicating that only 15 percent of illegal aliens go into agriculture, and about 30 percent went into assembly line activities, which Mr. Oswald indicated were viewed by the unions as essential entry-level jobs for the younger minority workers.

F. Business panel

1. Perry Ellsworth, Executive Vice President, National Council of Agricultural Employers;
2. Robert Thompson, Chairman, Labor Relations Committee, U.S. Chamber of Commerce. (Mr. Thompson was unable to appear, and his prepared statement was submitted for the record and is summarized very briefly below.)

1. Mr. Ellsworth indicated that the National Council of Agricultural Employers (NCAE) was neither for nor against employer sanctions at this time. However, they had taken the position that if employer sanctions are imposed, they must contain the following provisions: (1) the requirement that the employment be "knowingly," (2) a mechanism for appeal, (3) a means of identifying employment eligibility, and (4) some means to offset a subsequent worker shortfall in agriculture. During the questioning, Mr. Ellsworth indicated they could support an employer sanctions proposal with a secure verification system, but he reserved the right to comment on specific legislation.

Mr. Ellsworth stated that the agricultural employer differed from other employers in hiring an entire work force at least once a year. They were concerned about a shortfall in agriculture if illegal aliens were granted amnesty, fearing that they would choose either to go into more desirable employment or to leave the country. They believed the 50,000 temporary worker program would be very inadequate.

2. In his prepared statement, Mr. Thompson seriously questioned employer sanctions on a variety of grounds, including the burden on both U.S. employers and employees, the lack of control over illicit documents, and the lack of proven need.

Questions: In response to questions from Senator Simpson, Mr. Ellsworth said he believed that the great majority of U.S. employers would voluntarily comply with a Federal prohibition against hiring illegal aliens, and that employers would rather have legal workers than illegals now. Senator Simpson said that critics of the employers' position charged that it reflected "a desire of a minority of employers to maintain the possible use of cheaper foreign labor," rather than the "national interest." Mr. Ellsworth said that the facts did not exist to substantiate or refute that position, but that he had seen no evidence of it.

G. Ethnic panel

1. Joaquin Otero, International Vice President, Brotherhood of Railway and Airline Clerks, and Executive Vice Chairman, Labor Council for Latin American Advancement;
2. John Huerta, Associate Counsel, Los Angeles Office of Mexican American Legal Defense and Education Fund (MALDEF);
3. Arnold Torres, Executive Director, League of United Latin American Citizens (LULAC);
4. Maudine Cooper, Vice President for Washington Operations, National Urban League.

1. Jack Otero cited the work of the Select Commission on Immigration and Refugee Policy, on which he served, and in particular its statement that "all studies demonstrate that U.S. economic opportunity is the magnet that attracts those who enter the country illegally, regardless of the nationality or gender," in support of the need for employer sanctions. He indicated his support for strict sanctions against all employers who knowingly hire illegal aliens, and criminal penalties for repeat offenders. He also supported tighter enforcement of existing labor laws and an effective border control and interior enforcement program, including additional funding for INS. He stated that "employer sanctions without a means for verifying eligibility for employment, in other words an ID system, will not work," and recommended a tamper-proof, counterfeit-resistant social security card as the best means for verifying employment eligibility and thereby ending the present discrimination by employers in favor of illegal aliens.

2. Mr. Huerta expressed MALDEF's concerns about the employer sanctions proposals under consideration on the general grounds that they would increase discrimination against Hispanics. Commenting specifically on the Administration's proposals, he said they would not stop illegal migration; they would have adverse economic impacts, including high operational costs; they would be ineffective due to inadequate enforcement; and, in the event that they were effective, they would increase domestic unemployment by causing some businesses to move out of the country or go bankrupt, and increase inflation. In particular, he was concerned that inadequate enforcement would mean that people here legally would be faced with discrimination, while the hiring of illegals would continue.

3. Arnold Torres indicated that LULAC generally endorsed Mr. Huerta's comments on discrimination, noting the declining budget and declining emphasis on protecting civil rights under this Administration. He questioned the extent of displacement of U.S. workers, the earlier prediction that there would be a 75 percent good-faith compliance rate with an employer sanctions law based on experience with existing labor laws, and earlier contentions that most undocumented workers earn more than the minimum wage.

Mr. Oswald's figure of 60 percent, he said, was based on "a targeted piece of work" that did not reflect the national situation. He contended that there is a very direct correlation between the violation of labor laws and the hiring of undocumented workers, and he recommended vigorous enforcement of these laws.

4. Maudine Cooper stated that the National Urban League's concern with employer sanctions stemmed from their commitment "to enhancing the employment opportunities of minorities and the disadvantaged." She said the League supported civil penalties for employers who knowingly hired undocumented aliens and criminal penalties for a pattern or practice of such hiring.

Ms. Cooper cited the black youth unemployment rate of 50.7 percent and the figure of 30 million Americans living below the poverty level, in juxtaposition to the fact that millions employed in the United States are undocumented aliens, and questioned "how much of the world's poor this nation can absorb while its own poor become poorer." She rejected as circular the argument that undocumented aliens take jobs U.S. workers do not want, as follows: "Jobs held by undocumented workers are perceived as unattractive because of low wages and often substandard working conditions, but these circumstances are, in turn, perpetuated by the continued hiring of illegal aliens."

Finally, she expressed concern about the potential for employer discrimination presented by the Administration's proposal, indicating fear that employers could use compliance with employer sanctions legislation as an excuse for not hiring "black and other low-income Americans who change jobs more often than most."

Questions: In response to Senator Simpson's questions about what they proposed as alternatives to employer sanctions for controlling illegal immigration, Mr. Huerta stressed that MALDEF and LULAC did not favor an open border, and recommended higher funding of INS for both its enforcement and service functions. In addition to labor law enforcement, Mr. Torres recommended increased enforcement of specific provisions of the Immigration and Nationality Act (INA), including those relating to entry and exit procedures and backlogs; increased immigrant visas for countries with the greatest push factors; and, more important, an economic response to what they viewed as an economic problem, including the free trade border zones the Administration had recently proposed setting up with Mexico.

Senator Simpson also questioned Mr. Torres and Mr. Huerta on how discrimination could arise if there was a secure way for employers to ask every applicant about their employment eligibility. Mr. Torres expressed concern about the enforceability of such a requirement, indicating also that he knew of no acceptable identification scheme which had yet been proposed, and that they had "enough discrimination now under the current system to want to take any chance on any future introduction of a program of that nature." Senator Simpson reiterated that any system they came up with would be "a uniform requirement upon the employer" and would be "uniformly applied to everyone on a new-hire basis." He subsequently emphasized that they were attempting to come up with an immigration and refugee policy which would be free from racism, unlike much past U.S. policy in this area.

H. Scholars panel

1. Vernon Briggs, Professor, Cornell University;
2. Mark Miller, Professor, University of Delaware;
3. David North, Director, Center for Labor and Migration Studies, New TransCentury Foundation;
4. Douglas Parker, Director, Institute for Public Representation, Georgetown University Law Center.

1. Vernon Briggs indicated that he supported employer sanctions, but only as a part of a comprehensive reform package. He called sanctions the linchpin of any immigration reform package, in that without it nothing else made sense. He stated that employer sanctions would set the moral tone in making it an illegal act for an employer to hire an illegal alien, in the sense that anti-discrimination laws have set the moral tone for employment practices. He also believed that, given "plausible penalties," there would be "some element of voluntary compliance."

Mr. Briggs also stressed that employer sanctions hinged on the issue of identification, and strongly supported a counterfeit-proof social security card or work permit system. He believed that discrimination was a problem without secure identification, but much less of an issue with it. He also commented on the need for "sufficent penalties," which he subsequently defined as a minimum of $1,000 per alien, and suggested that the word "knowingly" be dropped. He indicated that his greatest concern about employer sanctions was that they would be ignored by the courts and consequently would have no impact on illegal immigration, a danger he saw as greater without appropriate penalties and identification.

2. Mark Miller reviewed the Western European experience with employer sanctions, noting that they were the key component in the efforts of all but a few Western European countries to curb illegal alien employment and residency. The various laws punish employers with fines and/or imprisonment, and some require the payment of back wages, taxes, and/or repatriation costs. Mr. Miller noted that "most continental European countries have some form of national identity card for citizens, while legally admitted foreign workers and their dependents are required to carry residency authorization at all times." He observed that the fact that Western European countries are more "ethnically homogenous" than the United States, and that "the police have freer rein to stop and ask for identity cards" in Europe than in the United States, facilitated the detection and apprehension of illegal aliens.

3. David North endorsed employer sanctions on the grounds that they were needed in order to protect disadvantaged workers and as a matter of employer-employee equity. He endorsed the package approach to enforcement, including international assistance and various types of immigration law enforcement which he outlined. He also noted that the Administration's employer sanctions proposal, modest though it might be, was nontheless an anomaly in the overall context of the Administration's general philosophy of how the nation should be governed, including its commitment to reducing both government expenditures and regulation of business.

4. Douglas Parker stated that he represented a group of lawyers "who are concerned about civil rights advocacy, on the one hand,

and issues of regulatory reform, cost-benefit analysis, as it were, on the other hand," and commented on a wide range of aspects of the employer sanctions issue. He raised a series of questions relating to discrimination and identification, including whether requiring employers to look into the backgrounds of job applicants didn't create a new sort of atmosphere of discrimination. He said that the Administration's proposal seemed to be "the worst of all possible worlds as far as discrimination is concerned," but he also raised questions about a secure ID card. These included whether there would be equality of access to an ID card system, what the employer was obligated to do with the ID card, the issue of noncounterfeitability, and the enforceability of the requirement that an employer require identification from all job applicants. He also suggested that, given all the unknowns and uncertainties, employer sanctions would not stand up under the kind of cost-benefit analysis this Administration has required in other areas.

Questions: In response to a question from Senator Simpson, all four witnesses in this panel said that they saw the illegal alien problem as serious. Mr. Miller and Mr. Briggs focused on the labor market impact, including displacement of the disadvantaged most in need of protection, and the long-run potential for creating an underclass. Mr. North commented also on the indirect impact on the Treasury resulting when legal residents were forced by displacement into income transfer programs. Mr. Parker indicated he was almost as concerned about the reaction to illegal immigration—which he characterized as "an atmosphere of perhaps panic and hysteria * * * and the feeling that somehow we have to do something"—as he was about the economic effects. As part of this colloquy, Senator Simpson indicated his belief that "the conditions are there to assure that something will be done." He said that the various constituencies wanted to do something, and that it was the Subcommittee's purpose to see that the right thing was done for the right reasons.

In response to further questioning, Mr. Miller traced the adoption of employer sanctions in Western Europe in the mid-1970s to the recruitment halt resulting from the general economic depression; the International Labour Organisation's (ILO) passage in 1975 of a convention concerning abuse of migrant labor; and "a solidification of foreign worker policies in virtually all Western European states." He indicated that there had been a broad consensus in Europe about employer sanctions, which were backed even by employer groups. He also said that employer sanctions did not appear to have increased discrimination against minority groups.

V. OCTOBER 2, 1981, "SYSTEMS TO VERIFY AUTHORIZATION TO WORK IN THE UNITED STATES"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Subcommittee on the Judiciary.

Senator Alan Simpson (Chairman of the Subcommittee), presiding.

Present: Senator Simpson.

A. *Opening statement by Senator Simpson*

Senator Simpson stated that an effective program of employer sanctions must provide employers with a new, secure system for verifying that job applicants are authorized to work in the United States, which at the same time would serve to identify illegal aliens. In his opinion, reliance on existing documents, as proposed by the Administration, was not sufficient because of their susceptibility to alteration and other fraud. He said the two arguments usually presented against a new verification system were excessive cost and the alleged threat to civil liberties, but he argued that the savings in terms of reduced unemployment and welfare benefits justified the cost, and he expressed puzzlement about how changing the form of the social security card, as an example of one alternative, would pose any threat to our liberty. He concurred with Father Theodore Hesburgh, the Chairman of the Select Commission on Immigration and Refugee Policy, that our freedom is best protected by the shared values, customs, and traditions of the American people.

B. *Administration panel*

1. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service, Department of Justice;
2. Malcolm Lovell, Undersecretary, Department of Labor; accompanied by Herbert Kline;
3. Sandy Crank, Associate Commissioner for Operational Policy Procedure, Social Security Administration, Department of Health and Human Services

Statements

1. Doris Meissner began by stating that "we agree with all the points you have made in your opening statement." She said a revised, secure identification system was very attractive and had been given close consideration by the Administration in its deliberations.

Ms. Meissner made two points about the Administration proposals. She noted first that the Select Commission had indicated that a new verification system would take 7 to 9 years to implement, rather than 3 to 5 years as she had previously stated. She said the Administration's proposal was "very definitely a first step and an attempt at taking a practical, realistic approach that can start within 6 months after passage." She indicated that while they would welcome an opportunity to talk about more secure systems, these would take time to develop even with the necessary resources.

Second, she stated that she believed that, in fact, enforcement of employer sanctions would not focus as much on checking documents as the current debate tended to imply. A great deal of the enforcement effort would be on employer education and assistance of the large number of employers who would comply voluntarily. The actual enforcement would be targeted on the much smaller group who would wish to employ illegal aliens. Based on current experience, she expected considerable assistance regarding these employers from fellow employers and employees and predicted very productive enforcement results.

2. Malcolm Lovell stressed the need for a work authorization system which was "prescribed by the government, required for all employers subject to sanctions, and applicable to all job applicants" as a critical adjunct to sanctions legislation. He said the work authorization system proposed by the Administration was designed to meet three objectives: (1) "to provide employers with an easily used and objective means of identifying persons entitled to work in the United States"; (2) to protect members of minority groups who are legally entitled to work here from possible employer discrimination; and (3) to provide the government with a means of establishing compliance with a prohibition against knowingly employing undocumented aliens.

3. Sandy Crank stated that the Social Security number system and card were never intended "as fool-proof personal identification," and briefly traced the expansion of the uses made of the Social Security number. He noted that they have been required to strengthen the issuance of the Social Security numbering system and, among other things, will include "Not valid for employment" on Social Security cards issued to aliens for nonwork purposes, as well as speeding up issuance and providing additional training for fraud detection. However, he said that to go beyond this and make the cards personal identifiers would raise problems including security of the underlying documents, cost, increasing the risk of abuse, and raising fears about individual freedom and privacy on the grounds of facilitated data linkage. He indicated that identity verification and reissuance of the 200 million cards now in existence would cost close to $1 billion and require over 50,000 man years. He also said that "to go further in the direction of making the [Social Security] card a national identity card would impose sanctions on millions of law-abiding American citizens instead of focusing our attention on those who are abusing the law."

Questions: Senator Simpson questioned Mr. Crank about various alternative methods of upgrading the Social Security card and numbering system. Mr. Crank indicated that prospective issuance of Social Security cards on banknote paper would cost about $13 million a year, indefinitely. This is in contrast to the $850 million—$1 billion estimated cost for reissuance of the 200 million cards now in existence, which would break down to approximately $180 million annually over a 5 year period plus continuing costs. Mr. Crank said that approximately 35 million people are currently receiving benefits under the Social Security system. He indicated that the estimated $850 million did not include "unscrambling earnings," where more than one stream of Social Security taxes has been received for a single number.

Senator Simpson and Mr. Crank discussed the fact that there was no penalty for reproducing the Social Security card, but only for the card's misuse. Mr. Crank said the Administration was considering penalties for reproduction, and a possible increase in penalties for misuse. The Senator also questioned Mr. Crank's statement that there was no such thing as a non-counterfeitable card, nothing that "the counterfeiting of currency is at a very manageble level."

Senator Simpson said he believed that the majority of employers would comply with Federal law in this area, but he asked whether illegal aliens would present false documents if the opportunity arose. Ms. Meissner expressed the opinion that some portion of the illegal alien population would avoid the undercover activity involved in dealing with false documents, but a "sizable proportion" would present false documents. She said INS would be more likely to deport an alien than prosecute him for the use of fraudulent documents, except for aggravated use. An employer would be held responsible for accepting fraudulent documents after due warning. She indicated that, while they expected an increase in fraudulent documents, the enforcement process would consist of building a record with both employers and aliens as to their continued use.

Senator Simpson questioned Ms. Meissner about INS' ADIT identification system. She said about 2 million ADIT cards had been issued to permanent resident aliens in the United States since the program began in 1977, and that INS would continue to issue about a million cards a year. The system has cost approximately $20 million through the end of fiscal year 1981, both for development and issuance; cards cost approximately $3.50 each. Ms. Meissner described the ADIT system as "an effective, secure card system," involving fingerprints, an inscription code, and a photograph. However, the turn-around time is slow, about a month. She said the ADIT card would be important in enforcing employer sanctions, and that they were looking at ways of adapting it for use in the legalization programs.

Labor Department witnesses indicated that the worker identification system currently in use in connection with the Farm Labor Contractor Registration Act was very similar to the one now proposed by the Administration, including reliance on a birth certificate, a passport, and various INS documents. Herbert Kline said that they had recently begun use of a Declaration of Citizenship, in effect an affidavit which can be obtained at the local employment service, to cope with the problem of migrant U.S. citizens who lacked proper identification.

C. Arthur Flemming, Chairman, U.S. Commission on Civil Rights

Statement

Mr. Flemming summarized the recommendations of the Civil Rights Commission in its September 1980 report, "The Tarnished Golden Door: Civil Rights Issues in Immigration," noting that the Commission recommended a three-pronged attack: (1) vigorous enforcement of the Fair Labor Standards Act and related laws; (2) providing additional resources for more effective work by INS; and (3) vigorous pursuit of bilateral and multilateral agreements with the major source countries of undocumented workers in order to reduce and regulate the flow.

The majority of the Civil Rights Commission opposed employer sanctions legislation, with or without a national identification system, on the grounds that it would impose law enforcement duties on employers and would increase employment discrimination. The majority also opposed a national identification card as a possible threat to civil liberties and an invasion of privacy because of its potential for use in linking up data about individuals and because of its vulnerability to government confiscation.

Questions: In response to questioning by Senator Simpson, Mr. Flemming recounted the spread of the use of the Social Security number and card beyond its intended purpose, noting that the Privacy Act of 1974 reflected concern about the threat this posed to privacy. He stressed that experience with the spread of the use made of the social security number led him to distrust assurances that the use of a universal identifier developed in connection with employer sanctions would remain limited, despite initial safeguards.

Senator Simpson replied that he viewed illegal immigration as a worse threat to the country's democratic foundations and institutions because of the concomitant development of an underclass of second-class citizens. Mr. Flemming shared this concern, and referred to the recent action by the Texas State Legislature denying the children of undocumented workers the right to attend public schools, and the comment of a U.S. District Court judge that what was involved was "the development of a sub-class of uneducated persons who could be victimized and treated virtually the same way as slaves were treated." However, he reiterated his initial three recommendations for dealing with undocumented workers and expressed concern that frustration could lead to shortcuts which might jeopardize our civil liberties. Senator Simpson assured his that the purpose of their extensive hearings was to avoid such shortcuts.

In response to Mr. Flemming's specific recommendations, Senator Simpson noted that very few witnesses had proposed enforcement of the existing law as a solution, and suggested that one problem with this approach as far as labor laws were concerned was that illegal workers were not going to file grievances. Mr. Flemming acknowledged this point, but responded that an enforcement agency could initiate action without waiting for an individual grievance.

D. Business panel

1. Bernard Brown, National Coalition of Apparel Industries;
2. Perry Ellsworth, National Council of Agricultural Employers;
3. Robert Neville, National Restaurant Association.

Statements

1. Bernard Brown indicated that he was presenting the position of the apparel manufacturing industry which, he said, hired large numbers of immigrants and native born Mexican-Americans and Oriental-Americans. He stressed the importance of "ethnically neutral" identification which would be required of all workers. He said the documents stipulated in the Administration's proposal were easily counterfeited, particularly the green card, and recommended that the system used "be one like Social Security which has the broadest possible application to our work force."

2. Perry Ellsworth indicated that the National Council of Agricultural Employers believed that employer sanctions must be accompanied by "some method of identifying the legal worker," suitable to the hiring and employment patterns of agriculture. As a

stop-gap measure, he recommended the use of a self-certification Declaration of Citizenship, described earlier by a Labor Department witness, plus possibly a voter registration card, in addition to the forms of identification proposed by the Administration. Ultimately, however, he said they still supported a non-counterfeitable Social Security card.

3. Robert Neville stressed the extent to which the members of the National Restaurant Association believed that immigration law enforcement was primarily a government responsibility. Accordingly, if employers were to be required to play a role, "whatever you tell them to do has to be clear, simple, and direct; and * * * they have got to feel they will not run afoul of the government."

Questions: Senator Simpson emphasized the critical role that would be played by employers, and the simultaneous need not to place a significant burden on them. In response to concern expressed by Mr. Neville that employers would be required to retain ID documents, he said that this was not intended, that employers would keep only the signed certification.

In response to questioning, all three witnesses indicated strong support for the principle of uniform identification requirements. They were sympathetic to a suggestion, not proposed by the Administration, that employers by penalized for not following the prescribed verification procedure even if no illegal aliens were hired.

In addition to a card system, a universal data bank system like that used by Master Card was discussed, and some concern was expressed about the feasibility of such an approach in agriculture and the restaurant business. Senator Simpson also questioned them about the use as an interim measure of an affidavit system proposed by David North, in which employers would keep a copy of a form and return one to INS. Mr. Ellsworth said it would not be practical for agriculture, and Mr. Brown indicated that a lot of legal garment workers don't speak English and might "be unwilling to just sign a document." Mr. Ellsworth stressed the need to involve the Labor Department's U.S. Employment Service in whatever system was set up, so that they would refer only workers authorized to work in the United States.

E. Hispanic panel

1. John Huerta, Mexican American Legal Defense and Educational Fund (MALDEF);
2. Arnold Torres, League of United Latin American Citizens (LULAC).

Statements

1. John Huerta focused his comments on what he understood to be Senator Simpson's proposal regarding worker identification. He noted that the proposal sounded as if it would be applied first to all new hires, and indicated that this would impact disproportionately on minority groups, including Hispanics, because they were overrepresented in that category. He also said that Hispanics would have difficulty producing the documentation necessary to obtain a secure card. He questioned whether employers would actually require identification from all new hires given the 50 million workers who enter the job market or change jobs annually. He recommended several amendments to laws other than the Immigration and

Nationality Act to avoid discrimination, as well as increased resources for law enforcement in the area.

2. Arnold Torres focused his initial comments on the Administration proposals. He expressed concern about targeting the enforcement of an employer sanctions law without an ID system in the 15 major cities and, in particular, about INS's expressed desire to work cooperatively with the private sector in enforcing the law. He also questioned the sincerity of some expressions of concern about the development of an undocumented underclass, noting that Hispanic-Americans had constituted an underclass for some time.

Mr. Torres also opposed an employer sanctions program with an ID system, noting that LULAC did not think it was worth the risk of discrimination. In his opinion, "the problem is a public perception that the undocumented is virtually and exclusively of Hispanic descent," regardless of the evidence to the contrary. Because of this perception, Hispanics were going to have more trouble with an employer sanctions law and the attendant ID requirements. Finally, he questioned the commitment of this Administration to provide the money necessary to enforce anti-discrimination legislation. Senator Simpson responsed that, "money alone will never solve the problems of discrimination."

Questions: In a discussion of possible discrimination against Hispanics, Senator Simpson argued that an employer would be in peril of violation of the sanctions proposal if he failed to ask everyone for identification and would thus be unlikely only to check Hispanics. At a subsequent point, Mr. Torres argued that there was no system that would document rejections—"you do not have a system in which you are going to report rejections because of fear that that person may be an undocumented worker."

With reference to INS's ADIT card, discussed earlier in the hearing, Mr. Huerta said that in fact INS could not afford the computers to read the cards, and he indicated concern that a similar problem could arise with a worker ID system.

Senator Simpson questioned the witnesses on their reaction to Arthur Flemming's opposition to secure work identification as a potential violation of privacy. Mr. Huerta noted that he saw a growing tendency toward data collection and linkage. Mr. Torres expressed concern that an identification card would tend to legalize a person's status in the country, regardless of Congressional intent to the contrary. He also noted that the other democratic countries in which ID systems worked well were small, homogenous, and accustomed to such a system, unlike the United States.

Senator Simpson suggested that increased INS enforcement, the alternative most frequently proposed by opponents of employer sanctions and ID systems, would be more discriminatory against the foreign-looking than the proposed forms. Mr. Huerta indicated, first, that it was their desire to protect the Latino population present in the United States, that it was not their goal to have a large undocumented population, and that they favored stricter border enforcement. Second, he said that INS's interior raids were illegal, and that there was now an injunction in effect against INS in Los Angeles in a case called *Zurick* v. *INS* currently pending before the Ninth Circuit. He indicated that while Senator Simpson's proposal was "less disruptive in the abstract," in fact they feared that employer sanctions would lead to less hiring of Latinos in order to avoid INS investigations.

F. Independent panel

1. John Shattuck, American Civil Liberties Union;
2. Paul McCleary, Executive Director, Church World Service, on behalf of Citizens Committee for Immigration Reform;
3. Ray Marshall, former Secretary of Labor and member of Select Commission on Immigration and Refugee Policy, on behalf of Economic Policy Council of the United Nations Association of the United States; accompanied by Dr. Silvia Hewlett, Executive Director.

Statements

1. John Shattuck reviewed work authorization systems that might be used in enforcing a prohibition against the employment of illegal aliens as well as associated constitutional issues. He discussed first a work authorization system based entirely on existing documentation, noting that while it was "simple and economical," it had the flaw of placing the burden on employers to ensure that they are not hiring illegal aliens. This, in turn, may lead to discrimination against racial or ethnic minorities, raise equal protection questions, and lead to claims of illegal employment discrimination under Title 7 of the Civil Rights Act of 1964.

The second system he discussed was a worker registration system using a centralized data bank of information to verify the identities of authorized workers. While it has the virtue of curtailing employer discretion, "it has the major flaw of conditioning the right to work on a person's willingness to give up certain aspects of a right to privacy" in the form of sufficient personal information for employment eligibility verification. He noted possible constitutional problems, with specific reference to a Louisiana case, Service Machine and Ship-Building Corporation v. Edwards, in which the U.S. Court of Appeals for the Fifth Circuit struck down as unconstitutional a Louisiana workers' registration ordinance, a decision affirmed by the Supreme Court. Constitutional issues raised, although not necessarily addressed, in that case included the right to work and change jobs, the right to travel, the right to privacy, and rights secured under the Commerce clause. He also questioned what uses would be made of such a system once it was set up.

Mr. Shattuck also commented briefly on a third alternative, the data bank system discussed above combined with a secure ID card. He subsequently indicated that this was the most objectionable of the three options in terms of its constitutional implications.

2. Paul McCleary testified on behalf of "a bipartisan, national organization recently formed through the leadership of Father Ted Hesburgh," the chairman of the Select Commission on Immigration and Refugee Policy, and his recommendations reflected the Commission's work. Mr. McCleary recommended increased resources and additional personnel for INS so that it might better enforce existing law, but indicated that this would not be sufficient as long as there were opportunities for illegal employment here. He stated that "The Citizens' Committee for Immigration Reform strongly endorses the use of a reliable, secure and non-discriminatory

worker identification system in conjunction with sanctions against employers who knowingly hire undocumented aliens." He expressed the view that a universal identification system could protect the civil rights and civil liberties of all workers, and specifically suggested the development of a computer data base with or without a card system. Such a system, he said, must be accompanied by strict legislative limits on access to and use of the underlying data.

3. Ray Marshall characterized the illegal immigration issue as "probably the most difficult question that I have ever dealt with in my professional life." The former Secretary of Labor and a member of the Select Commission, he testified on behalf of the Economic Policy Council, described by its Executive Director, Silvia Hewlett, as "a private sector group which represents both labor and business leadership." Mr. Marshall said that they recommended increased resources for INS to improve physical control of immigration, combined with employer sanctions to reduce the incentive for illegal immigration. To facilitate employer compliance, they recommended a system of work authorization for all new emplcyers similar to the data bank system developed by the Labor Department for the Select Commission.

Mr. Marshall also recommended that illegal immigrants who have resided here continuously since a predetermined date should be permitted to remain as permanent resident aliens. However, he observed that "the proper sequence of changes in immigration policy is very important," and recommended "that making the system more secure should precede this amnesty." U.S. cooperation with neighboring countries was also recommended as part of the package. Commenting on the civil liberties implications of the identification issue, he suggested that the impact of doing nothing had to be weighed against the effect of providing employers with an easy way to determine who was here illegally.

Questions: Senator Simpson observed that Mr. Shattuck's civil liberties concerns were akin to those expressed by Mr. Flemming that morning and asked for specific examples of problems which might arise. Mr. Shattuck mentioned the increasing centralization of data on individuals over the past 15 years, particularly in the private sector. He gave as examples the access of would-be employers to arrest records, the use of data banks to combat welfare fraud, the parent locator service to identify run-away welfare fathers, and noted there were other less benign uses possible. Senator Simpson stressed that the kind of system he had in mind would allow access only to the mother's maiden name and the individual's date of birth.

In response to questioning by Senator Simpson, Mr. Marshall indicated that he did not agree with some who claimed that we had passed the point of no return and were physically unable to control the flow of people into the United States. He endorsed the package approach he had recommended, including employer sanctions, ID, and amnesty, as opposed to either enforcement measures by themselves, or a perpetuation of the present system with all its emerging problems. He emphasized the need for employer sanctions "because the main motive for illegal entry into the United States of immigrants—as contrasted with refugees—is to work."

With regard to the identification issue, Mr. Marshall observed "that you have to try to determine the impact of any new system on the existing system," and noted that the data bank system proposed by the Department of Labor would benefit it in terms of available information about the labor market. In contrast, the Social Security Administration has claimed that upgrading the Social Security card to the point where it could be used for identification purposes would damage the Social Security system. Additionally, the Social Security files provide more information than is needed and raise privacy issues. Commenting finally on the economic development of Mexico, Mr. Marshall said this would be done by Mexico, not the United States, and that it would take some time. In the meantime, "we have the right to control our borders."

G. Independent panel

1. Roger Conner, Executive Director, Federation for American Immigration Reform (FAIR);
2. Sidney Rawitz, Attorney.

Statements

1. Roger Conner outlined the four reasons why FAIR found the call-in identification system attractive. In his opinion, it offered the best protection against employers prepared to hire illegal aliens and lie about whether they checked their identification, since the government would have a record of all checks and be responsible for verifying worker eligibility. It best protects employers complying in good faith by providing them with a valid record which would serve as a defense against prosecution. It protects best against discrimination by providing the employer with an incentive to check every applicant; and it minimizes the burden on the employer since the government, not the employer, decides which applicants are entitled to accept employment. He also suggested a call-in system could be combined with a card, existing documents, or an affidavit.

2. Sidney Rawitz noted that an employer sanctions law passed the Senate in 1951 as an amendment to the bracero law, but did not survive the joint conference and was rejected by the House. He expressed the opinion that employers hire illegal aliens because of economic incentives and because it is not illegal to do so, and that the great majority would comply with an employer sanctions law.

Mr. Rawitz proposed an identification procedure not requiring a national identification card under which employers would be required to inquire whether applicants are eligible to work. Employees would sign a form indicating whether they were native born or naturalized U.S. citizens, permanent resident aliens, or aliens otherwise eligible to work. In the case of native born citizens, who constitute the vast majority of the work force, no further inquiry would be made; misrepresentation of citizenship is a felony under 18 U.S.C. 911, and he said illegal aliens were unlikely to make false claims. Naturalized citizens would be asked to bring in a Certificate of Naturalization, and aliens would be asked for official documentation of their status, which they are required by law to carry. Evidence that the employer has obtained a signed statement in writing from the employee and has made the required notations would be deemed prima facie evidence that he has made a good-faith inquiry.

Questions: In response to questioning by Senator Simpson, Mr. Conner said that he believed the principal strength of the Administration's employer sanctions, worker identifier approach was that it would make it illegal to employ illegal immigrants. The principal weakness was that there was no way to be sure the employer checked, which would pose problems both for a prosecutor and an employer who makes a good faith effort to comply with the law. Additionally, he was concerned about the problem of fraudulent documents.

Senator Simpson indicated that employer groups are supporting at least the concept of some type of employment system, and that this was satisfying.

Mr. Rawitz said he believed his proposal was superior to the Administration's, which Senator Simpson noted it resembled in some respects, in that the great majority of the working force would not be required to present documentation. He also seriously questioned the value of the specific documentation designated by the Administration.

H. Scholars panel

1. Philip Martin, Associate Professor, University of California, Davis;
2. David North, New TransCentury Foundation.

Statements

1. Philip Martin began his discussion of European immigration control systems by briefly summarizing recent European policy and experience. European nations began recruiting foreign labor in the 1950s. By 1973, about 7 million migrants, comprising 10 percent of the recruiting countries' work force, were at work across Europe. The labor recruitment stopped in 1973–1974. Of the 7 million migrants, more than 2 million have returned home since 1973, but the remaining 5 million have been joined by 9 million dependents, bringing the total foreign population to approximately 14 million. This is expected to keep increasing by 300,000 to 500,000 annually until family reunification is completed. Germany has the most foreign residents, about 4.6 million; France has about 4.2 million.

Most Europeans have the right to live and work in any other European country under agreements among the 10-nation European Economic Community (EEC) and the 4-nation Scandinavian Common Market. Mr. Martin noted that the interesting point was how few people took advantage of the right to migrate. Migrants without mobility guarantees constitute about 70 percent of the foreign workers now in Europe.

Germany and most other European countries have separate work and residence permit systems. Work permits must be shown to all potential employers and their numbers are recorded. General work permits are issued for 1 to 2 years and are often not renewed if unemployment is high. Special work permits entitle the bearer to seek work regardless of employment conditions, and may be obtained after 5 years continuous employment or marriage to a German citizen. A separate residence permit is required to live in

Germany for more than 3 months and is currently issued only to applicants with work permits. After 5 years continuous residence and receipt of a special work permit, a non-EEC migrant may apply for an unlimited residence permit, and after 8 years a residence title, which is essentially permanent resident alien status.

Illegal aliens are less of a problem in Germany than in the United States. Germany has about 2 million legal migrant workers, and an estimated 200,000 to 300,000 illegal aliens. They are found mostly in construction (about half), hotels and restaurants, and agriculture. Employer sanctions include prison terms and fines of about $15,000; unions and employers are currently demanding stepped-up enforcement.

2. David North agreed with critics of employer sanctions that employers should not be required to determine workers' legal status. He said in the long run a more secure card or call-in system would be necessary to eliminate the element of employer discretion, and proposed a short-term interim identification system to be implemented immediately with employer sanctions. He said his proposal closely resembled that of Senator Huddleston, and draws on the system used by Los Angeles County to prevent illegal aliens from getting welfare benefits, which saves more than $15 million a year.

The employee affidavit system outlined by Mr. North involves a form to be filled in by both employers and new hires. The employee is told the form may be sent to INS for verification, and the employer is asked to note whether he assisted the employee in filling out the form, as an indication of possible collusion.

Questions: Senator Simpson questioned Mr. Martin about the lessons to be learned from Europe, and he replied that there were three: (1) migrant labor flows are easier to start than stop, and it is very difficult to rotate temporary workers through permanent jobs; (2) supplemental labor recruitment tends to be self-perpetuating both in economic and sociological terms; and (3) European labor migration has not worked to reduce inequality between sending and receiving countries (e.g., Turkey argues that Germany has kept its best and brightest). Mr. Martin indicated that counterfeiting was not of much concern, in part because of the multiple residence and work permit forms involved and because of sweep checks. He said the abuse of Germany's liberal refugee law and long appeals process was more of a problem. He also said that German enforcement officials get many of their complaints about the use of illegal workers from other employers. He said there has not been a perceived problem of discrimination under European employer sanction laws.

In response to Senator Simpson's question about the cost of the affidavit system he proposed, Mr. North estimated it at approximately $40 or $50 million a year and noted that it could be effective quite quickly. He suggested that patterns of collusion, as opposed to patterns of employment, might be investigated as a protection against discrimination under the system.

VI. OCTOBER 14, 1981, "ASYLUM ADJUDICATION"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (chairman of the subcommittee) presiding. Present: Senators Simpson (R., Wyo.) and Grassley (R., Iowa).

A. Opening statement of the subcommittee chairman

Senator Alan Simpson opened the hearing by explaining the importance of the determination of who is entitled to asylum in the United States. He pointed out how being a country of first mass asylum has affected U.S. communities and how the number of people claiming asylum is impeding adjudications procedures. He said that the hearing would address how best to determine the legal status of those who enter the United States and plead asylum and how to determine the rights of those who enter the United States for some other purpose and then plead asylum. He said revising the asylum laws should result in clear policies and procedures that will allow speedy determinations and distinguish between frivolous and legitimate asylum claims.

B. Administration panel

1. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service (INS), Accompanied by Paul W. Schmidt, Deputy General Counsel, INS;
2. Stephen E. Palmer, Jr., Acting Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs, Department of State (DOS).

Statements

1. Doris Meissner pointed out that in the past, emphasis had been placed on procedures for overseas processing of refugees. She said that the number of asylum applications in the United States has risen dramatically in the last 2 years and that present procedures and regulations governing asylum are inadequate in light of the change. She said the Administration proposals in this area would streamline asylum exclusion procedures and allow the United States to better manage the asylum issue. She described these proposals to include: separating asylum adjudication from exclusion and deportation procedures; making the asylum process an administrative decision, not subject to judicial review; and having asylum decisions made by a new personnel category of "asylum officers." She said the asylum officers' decisions would be certifiable to the Attorney General for review but would not be subject to judicial review. She said the Administration also proposes to streamline exclusion procedures, making those who arrive in the United States without any documents subject to summary exclusion, with certain protections; and that the President be given broad powers in emergency situations, allowing special asylum and deportation procedures to be invoked.

2. Stephen Palmer described the role of the DOS in the processing of asylum claims. He indicated that the number of cases they review has increased dramatically in recent years and that they have a backlog. He said they would work with INS to ensure expeditious processing. He indicated that the DOS proposed specifically to continue providing advisory opinions in three categories of cases, including those that are especially complex or sensitive, those of

special interest to the Service and DOS, and any others that asylum officers wish to refer to them.

Questions: In response to questions from Senator Simpson, Ms. Meissner indicated that the changes suggested in asylum adjudications would make the process more like other adjudications performed by INS and would also eliminate delays that result from the existing appeals system. She said the current system has been formally a part of INS operating procedures only since 1972. She said the Administration's proposal attempts to create a system that is fair without allowing abuses and dilatory tactics. She described the proposed asylum officers as new highgrade Civil Service positions, to be recruited largely from outside the government.

Senator Simpson questioned Ms. Meissner regarding the role of the judiciary in asylum adjudications. Ms. Meissner stated that it is nearly impossible to allow one level of judicial review, so the Administration proposes eliminating such review altogether. She said erroneous decisions or problems could be dealt with administratively. She indicated that the proposed process compares to that of consular officers processing refugees overseas.

Senators Simpson and Grassley asked about the Administration's interdiction program and Ms. Meissner indicated that the immigration officers aboard the Coast Guard cutter are not identical to the proposed asylum officers. She said the current officers would identify people who have a possible claim to refugee status but adjudication of the claims on the high seas is not contemplated. She also said that although the Administration would like to see legislation that authorizes interdiction, they believe there is already sufficient general authority to proceed as the President has. Ms. Meissner said she does not know the cost of the interdiction program. She said interdicted boats would be returned to their countries and that the United States would be monitoring the situation to see what happens to those people. Mr. Palmer said the Haitian International Red Cross will receive the returnees and that personnel from the U.S. embassy will be in the reception committee and will be able to follow through on what occurs. He emphasized that the Haitian government has assured the United States that those who return will not be persecuted.

In response to further questions from Senator Grassley, Mr. Schmidt, INS general counsel, indicated that the proposed emergency legislation would give the President some authority beyond what he has now exercised in preventing departures from the United States in emergencies.

In view of the rising number of asylum applications, Senator Grassley questioned how many new asylum officers would be needed to handle the workload. Ms. Meissner indicated that they are discussing this with the Office of Management and Budget and that they believe they will have to be able to handle a caseload of about 50,000 per year. She said it would take about 60-90 days to effect the new procedures.

In response to questions from Senator Grassley, Mr. Palmer indicated that despite the use of extra personnel in the DOS for the asylum claims, there is a substantial backlog. He indicated that the DOS will work with INS to maintain DOS involvement in claims that appear possibly meritorious and about which there is some reasonable doubt. In response to questions from Senator Simpson, Mr. Palmer indicated that the DOS has issued 14,091 advisory opinions to INS this year and that a backlog of approximately 65,000 asylum claims exists.

Mr. Palmer and Ms. Meissner addressed questions from Senator Grassley regarding how the situation in Indochina compares with that in Haiti. Mr. Palmer said the situations are different in that those fleeing Communist regimes in Indochina can be said to have genuine political fears, and if they are returned will almost automatically receive lengthy prison sentences which is not the case in Haiti. Ms. Meissner indicated that the difference is based more on the issue of safety than on the issue of economic motivations for leaving. Ms. Meissner further indicated that because there have been few returns to Haiti in the past several years, there is little recent information on whether there is political persecution of those who have left the country and then returned.

C. Lawyers panel

1. Dale F. Swartz, Esq., Executive Director of the National Coalition for Refugee Reform;
2. Ira Kurzban, Counsel for National Civil Liberties Committee and the Haitian Refugee Center, Inc.;
3. Dale M. Schwartz, Esq., Partner, Law Firm of Troutman, Sanders, Lockerman and Ashmore, Atlanta, Georgia;
4. Stanley Mailman, Esq., Representative of Lawyers Committee for International Human Rights.

1. Dale F. Swartz indicated that interdiction is a serious matter. He compared it to the U.S. government's actions in turning away boats of people in the late 1930s and pointed out that the United States has recently condemned such practices by other countries. He stated that there is evidence that the Haitian government had adopted a policy of persecuting those returned from abroad. He said that the Administration's interdiction program and some of the Administration's proposed policies would represent substantial departures from U.S. tradition, prior practices, and commitment to the rule of law. He suggested that the debate on mass asylum should focus first on root causes and less on procedures and symptoms. He indicated that his written testimony included specific recommendations for streamlining the asylum process while maintaining fundmental fairness. He stressed that laws should be applied in the way Congress intended. He also said the United States should consider having the international community involved in asylum processing. He indicated that involving the international community would create some sense of reality and fairness, that the United States supports international involvement in other parts of the world, and that the international community provides for resettlement opportunities for refugees and repatriation of those not determined to be refugees.

2. Ira Kurzban said that he believes there are three basic causal factors underlying U.S. asylum problems: (1) the structural defects within the DOS and INS that hamper effective investigations of allegations made in asylum applications; (2) structural defects within INS that affect the processing of asylum applications, including du-

INS that affect the processing of asylum applications, including du-

plicative processes that do not ensure error correction and competing goals within the INS; and (3) U.S. foreign policy. He suggested cutting the duplicative processes that exist and changing the burden of proof to that traditionally used by courts in administrative proceedings.

3. Dale M. Schwartz said that interdiction can be dangerous internationally and personally. He questioned whether decisions made on asylum claims have been fair and whether eliminating the appellate procedure might exacerbate the situation. He proposed creating a system in which either Federal judiciary officers or magistrates of the Federal court could be first instance or appellate officers to hear asylum in adversarial proceedings. He indicated that if applicants are not given a fair opportunity to present their cases, mistakes will be made.

4. Stanley Mailman said the greatest concern is that we may lose sight of the individual who is seeking asylum. He indicated that INS recognized the need for a hearing on the question of asylum in its regulations prior to the Refugee Act of 1980. He said that the findings by Judge King in the Haitian Refugee Center case indicated that INS adjudicators were in effect told to quickly deny asylum to the Haitians and that this suggests that administrative adjudications may not be fair. He suggested use of an international system of adjudication where the decisions would be reviewed by an independent board. He also suggested limiting the role of the DOS in asylum adjudications; maintaining the definition of refugee as contained in the Refugee Act; and retaining the provision of sec. 243(h) of the Act, allowing for suspension of deportation on the basis of fear of persecution.

Questions: Senator Simpson stated that he would like to have the panel address the question of how to deal with the current backlog and anticipated forthcoming asylum applications. Mr. Kurzban said the current process is not useful, but that changes must include measures that ensure that those who have a bonafide claim to asylum are treated fairly. He indicated that he believes there should be some independence in the system and the standard and burden of proof on the alien should be changed. He suggested using an independent asylum board with immigration judges sitting solely to hear asylum cases. He also said that the slowness in processing asylum cases does not occur at the appellate level but at the time of entry. Mr. Swartz indicated that he didn't believe the interdiction program would significantly curb the flow of Haitians to the United States. He said that the proposed detention policy might provide greater incentive to aliens to enter the United States at other points and to remain here under cover. He also indicated that he believes some thought should be given to international models. He said he concurred with those who said that any streamlining of the asylum process should be done fairly and lawfully. He suggested that an advisory board could develop group profiles that would streamline the process. He also recommended a one-step appeal and stated that he believes there are practical reasons to not eliminate the jurisdiction of the district courts, for example, the time and expense involved in individual appeals versus a class action. Mr. Swartz indicated that although he wouldn't remove the DOS from the asylum process, he feels their role should receive

DOS from the asylum process, he feels their role should receive

less emphasis. He said that INS is under-funded and cannot process claims quickly and that if INS had the staff, the work would proceed more efficiently. He further indicated that limiting the time to file asylum claims to 14 days and eliminating the right to appeal would violate the letter and the spirit of the U.N. Protocol. Mr. Mailman indicated that the Lawyers Committee has suggested establishing a board for the determination of refugee status. He said the DOS is charged with carrying out U.S. foreign policy and that it would be good if that aspect could be reduced in the adjudication of asylum cases.

In response to questions from Senator Simpson regarding the ethics of lawyers representing the Haitians, Mr. Swartz said that he and many others were not receiving payment for their services. Mr. Kurzban said that it is the position of the Haitian Refugee Center and other organizations providing free legal services to the Haitians that it is all right to solicit clients under those circumstances. He addressed the issue of delay by litigation by saying that they have not been trying to develop new rights for refugees but to force the INS to follow their own regulations. He indicated that the delays are a result of the INS' failure to follow its regulations and its failure to act on cases for long periods of time.

D. Scholars panel

1. John Scanlan, Professor, Center for Civil and Human Rights, Notre Dame University School of Law;
2. David Martin, professor, University of Virginia School of Law, Charlottesville, Virginia;
3. Richard A. Boswell, Professor, National Law Center, George Washington University;
4. David Milhollan, Chief Judge, Board of Immigration Appeals.

Statements

1. John Scanlan indicated that asylum is a legal obligation the United States has incurred for humanitarian reasons. He said that unnecessary steps in the asylum process encourage delay. He said that to improve the system, it must be recognized that courts often perceive the decisions made in initial asylum proceedings as politically motivated, conducted with prejudice, and based on predetermined advisory opinions that do not permit individual applicants to demonstrate their well-founded fear of persecution upon return home. He said that limiting the judicial role without remedying the initial review system might be efficient but would deny the rights of those who are seeking asylum. In addition, he said that efficiency gained in this manner would be offset by such factors as constitutional problems and litigation over due process rights. He said that if the initial asylum procedures are improved, a simpler review mechanism could be instituted. He suggested that the present advisory opinions should be replaced by profiles for examining individual claims and that such profiles should be compiled by an entity other than DOS, with input from them. He also suggested that asylum officers handle the individual claims and that such officers should have education and expertise. Finally, he indicated that a review board should be appointed by Congress to review asylum claims.

board should be appointed by Congress to review asylum claims.

2. David Martin said that we need to be concerned about expeditiously granting asylum in meritorious cases as well as expeditiously denying asylum. He indicated that the ability to promptly deny and to enforce the denial of frivolous claims would deter new entries. He further indicated that use of extensive detention and interdiction instead of prompt response to claims is ineffective. To improve asylum adjudications, he suggested clarifying the standard [e.g., well-founded fear of persecution] on which asylum is based to include specifically stating that the individual applicant must demonstrate good reason to fear persecution if returned to the home country. He also suggested using a professional corps of asylum adjudicators. He supported the use of a non-adversarial setting for determining asylum claims and the use of an administrative appeal board.

3. Richard Boswell indicated that he believes there are problems in the way immigration law is implemented in the area of asylum adjudication. He said he does not believe changes should necessarily be made in the law. He indicated that he does believe we should make prompt decisions but that he doesn't believe judicial review is the major cause of delay. He suggested that delay occurs between the time the application is filed and the time it reaches the DOS. He suggested limiting the amount of time INS has to make individual decisions. He also suggested eliminating the DOS' role of making recommendations.

4. David Milhollan stated that the Board of Immigration Appeals has not experienced a large increase in the number of asylum appeals. He indicated that they had been adjudicating about 2,500 cases per year and that they did about 400 additional cases in the past fiscal year as a result of the Cuban exodus.

Questions: Senator Simpson recognized the presence of Garry Perkins of the U.N. High Commission on Refugees and thanked him for the work the Commission is doing on asylum.

In response to questions from Senator Simpson, Mr. Scanlan indicated that constantly updated profiles would help speed the asylum process. He also indicated that he believes that after the initial determination, only one body should be allowed to consider the substantive questions raised in an asylum claim. Mr. Martin said that a variety of factors may cause delay in the asylum proceedings but that he believes the availability of interlocutory review of procedures in the judicial system may be particularly debilitating. He indicated that he favors one clear line of direct review after the final determination in the administrative system.

Senator Simpson questioned Mr. Boswell regarding the effect increased asylum applications have on the system. Mr. Boswell indicated that he believes the problem of the number of asylum applications is short-term and that most of the delay in processing occurs between the time the application is filed and the time the recommendation comes back from the DOS. He indicated that he believes that there should be a mechanism for review of decisions made by the asylum officers. Judge Milhollan pointed out that delays in the asylum process are not occurring at the existing Board of Immigration Appeals. He described pretrial procedures that would further speed adjudication of the asylum cases, and Senator Simpson commented that further use of such procedures

Senator Simpson commented that further use of such procedures

might be effective and should be investigated. Mr. Martin pointed out, in response to questions from Senator Simpson, that imposing a time limit for applying for asylum is not in accordance with the U.N. Convention which prohibits return to a country of persecution whether or not the applicant seeks refuge promptly.

Mr. Boswell, in response to questions from Senator Simpson regarding what rights should be accorded those who enter this country illegally, indicated that because applicants for asylum are arguably in fear for their lives if returned to their countries, they should be given every opportunity to make their case.

VII. OCTOBER 16, 1981, "ADJUDICATION PROCEDURE"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (chairman of the subcommittee) presiding.

Present: Senators Simpson (R., Wyo.) and Grassley (R., Iowa).

A. Opening statement of the subcommittee chairman

Senator Simpson said that the hearing would cover adjudication, encompassing both those procedures resulting from requests outside the Immigration and Naturalization Service (INS) and those initiated by INS. He indicated that the adjudication structure is arcane, complex, and inefficient, involving several levels of various agencies. He said that the hearing would focus on the role of institutions in adjudication.

B. Administration panel

1. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service (INS);
2. Aaron Bodin, Director of the Division of Labor Certification, Department of Labor (DOL);
3. David Milhollan, Chairman of the Board of Immigration Appeals (BIA).

1. Ms. Meissner briefly outlined the present administrative process used in immigration cases. She indicated that immigration judges (special inquiry officers) who are Civil Service employees hear the cases. Under regulations, their decisions can be appealed to the Board of Immigration Appeals (BIA). She said the Administration examined three options before deciding to propose that the immigration judiciary be established as an independent body within the Department of Justice (DOJ), with the BIA as a statutory board. She indicated that the Parole Commission within the DOJ is a model for what they are proposing.

2. Mr. Bodin explained the purpose for and processes used in labor certifications. He indicated that aliens seeking admission to the United States under third, sixth, or nonpreference immigration categories must first secure certification from the DOL that there are no sufficient able, willing and qualified U.S. workers available and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. He indicated that similar certification is required for the admission of temporary foreign workers (nonimmigrants). Mr. Bodin explained that the labor certification program is decentralized, with

applications originating in about 2,500 local offices being forwarded, usually through State headquarters, to 10 regional offices of the Employment and Training Administration for determination by a certifying officer.

3. Mr. Milhollan described the BIA as a unit within the DOJ, consisting of a chairman, four Board members, and 41 employees. He said it provides the final administrative remedy in most cases for the review of certain INS decisions. He said the majority of the appeals to the Board involve orders of deportation and that the Board reviews decisions by immigration judges and district directors. A very small percentage of Board decisions are appealed in Federal court. The board exists under regulations rather than by statutory authority. He pointed out that various studies have recommended creating a statutory board or court and that recently consideration has focused on whether it should be an Article I court or an independent body within the DOJ, similar to the Parole Commission. He indicated that in fiscal year 1981, the Board received approximately 1,000 more appeals than the preceding year, attributable primarily to the Iranian hostage situation and the Cuban flotilla. He indicated that the Board does currently act independently within the DOJ and that he didn't believe it would be difficult to create, by statute, a board within the Department that would continue to function in much the same way.

Questions: Senator Simpson questioned the need for so many employee organizations within INS. Ms. Meissner suggested that the purpose of the organizations is to register some legitimate concerns and opinions, and if INS was improved there would be less need for such organizations. In response to questions from Senator Grassley, Ms. Meissner said the INS has been working on its administrative problems and she described some new procedures that have been implemented.

In response to questions from Senator Simpson, Ms. Meissner said that the Administration is proposing to remove the immigration judges from INS and establish them as an independent body within DOJ where there would be a clear administrative link between them and the BIA. Mr. Milhollan agreed that the relationship between the immigration judges as the trial level and the BIA as the appellate level would continue under the Administration proposal. He said the administrative relationship that would be created would depend on what administrative procedures were established.

In response to questioning by Senator Simpson, Mr. Bodin explained that there is statutory authority for the Secretary of Labor to determine certifiability of third and sixth and nonpreference immigrants, while INS regulations govern certification procedures used for H-2 temporary workers. He indicated that in the H-2 certification process the DOL is not required to monitor the recruitment efforts of employers to determine whether U.S. workers are willing to accept a specific job offer. Mr. Bodin said that the role of the DOL in immigration adjudication is specifically geared to the protection of U.S. workers and that there is close cooperation between INS and DOL. He agreed with Senator Simpson that the policy of family reunification dilutes what is achieved in the labor certification process in that only a small number of immigrants

certification process in that only a small number of immigrants

who come to this country to work are screened in the certification procedure. He estimated that 5–10 percent of the immigrants entering the labor force each year have gone through the labor certification process. He indicated that the DOL has determined that physical therapists, nurses, physicians and surgeons in medically underserved areas are currently in short supply. In response to questions from Senators Grassley and Simpson regarding temporary workers, Ms. Meissner indicated that the Administration supports an experimental temporary worker program. She said that there is evidence that such workers are needed in certain circumstances and that the Administration's program would test that proposition. Mr. Bodin said that under the present H-2 temporary worker program, approximately 18,000 entries are engaged in agriculture and of the remaining 25,000, nearly 12,500 are in professional, technical and managerial occupations and about 6,000 are in structural trades. Senator Simpson commented that it appears that about 15 percent of the H-2s would be going into agriculture. He said that statistics indicate that about 13–15 percent of all illegals also go into agriculture and that the remainder of both H-2s and illegals are going into other occupations. Mr. Bodin, in response to questions, indicated that the proposed 50,000 entries in the experimental program would be in addition to the H-2 program.

Senator Grassley questioned how the Administration's proposed asylum officers would affect the BIA caseload. Mr. Milhollan said that the Board could not handle a substantial increase in cases. He said that since there are apparently a large number of asylum claims pending which have not been adjudicated on a lower level and that perhaps a large percentage of these would be coming to the Board, such asylum officers would allow the Board to continue functioning by adjudicating without getting into the asylum area. In response to further questioning by Senator Grassley, Mr. Milhollan indicated that he did not know how many Haitian exclusion cases would come to the Board but that they anticipate growing numbers.

Senator Simpson expressed concern regarding the use of delaying tactics during immigration litigation. Ms. Meissner and Mr. Milhollan indicated that they believe the problem is that delays in immigration serve the alien. Ms. Meissner said that the "effect of the delays work so directly to the benefit of those people whom they are trying to exclude or deport."

C. Lawyers panel

1. Charles C. Foster, Esq., President, American Immigration Lawyers Association;
2. Sam Bernsen, Esq., former General Counsel of INS, and Director of Legal Research for the Select Commission on Immigration and Refugee Policy;
3. Leon Wildes, Esq., former President, National Association of Immigration and Nationality Lawyers.

Statements

1. Mr. Foster indicated that the Association supports statutory creation of procedures that provide for the independence of the immigration judge, apart from the law enforcement side of INS. He

said that they believe the immigration judge should have an independent budget and that it would be preferable for the judge to be accountable to the BIA than, as presently, to the INS district directors. He suggested that the current recruitment process for immigration judges be reconsidered. He said they favor an Article I court, but not at the expense of waiving the present right of appeal and suggested that immigration judges could constitute a trial level and the Board an appellate level, both having substantially the same jurisdiction they currently have. He also suggested the need for a board to review decisions made by consular officers. He stated that he believes too much discretion is given to the Attorney General under immigration law and that this discretion is actually exercised by immigration examiners and INS district directors. He indicated that INS budget problems have contributed to the length of time cases take because petitions or applications have been pending for years without adjudication by an immigration officer.

2. Mr. Bernsen indicated that many aliens qualified to enter the United States suffer because of the long delays that occur within INS before action is taken on applications and petitions. He said it is unrealistic to expect INS staffing will be increased to cope with the problem but that INS could make administrative changes which would improve the situation. For example, he suggested that INS can no longer minutely examine each case but must concentrate on implementing the spirit of the law. He said that techniques developed by other agencies, such as random examination of baggage by Customs, are examples of how INS might approach its task. He pointed out that the role of adjudicating officer should be clarified and that guideline timetables for adjudications should be established. He also suggested using a computer to check for adverse information on applications or petitions rather than using INS files.

3. Mr. Wildes suggested that the judiciary in the immigration administrative field be independent and that the immigration judge have full authority to determine the entire case. He said he believes these suggestions require minimal statutory changes. He said the BIA should be made a statutory body; that the authority of immigration judges should be broadened to include the necessary discretion and authority to handle all cases; that the statute should incorporate as many as possible of the Federal Rules of Civil Procedure; that the BIA and the Immigration Court should be separately funded without access or interference by either party that practices before them; and that the present appeal system from the BIA to the circuit courts be retained.

Questions: In response to questions from Senator Simpson regarding lwyers who misuse the system, Mr. Foster indicated that he believes most lawyers do not seek delay per se, but that the system itself produces delay. He suggested that the fees charged aliens in immigration cases might seem high because most such cases last from 6 months to several years. He said his organization is concerned about the ethics of attorneys and that Texas has pioneered a system whereby the State bar will designate individuals who have standards of competency to practice in a special area, such as immigration.

In response to questioning from Senator Simpson, Mr. Bernsen indicated that he believes morale at INS would be improved if there was more contact between the higher- and lower-level people. He also agreed that a separation of service and enforcement functions at INS would be helpful.

Senator Simpson asked Mr. Bernsen to explain how he believes the adjudication system could be simplified and Mr. Bernsen said that they could use cursory review of most cases with a checklist of factors to indentify cases requiring more intensive review. Mr. Bernsen, Mr. Foster, and Mr. Wildes agreed that handling INS applications and petitions as the IRS handles tax returns, that is, granting an assumption under penalty of law that they are correct and truthful and then doing spot checks, might be appropriate and workable.

In response to questions from Senator Simpson, Mr. Wildes agreed that use of pretrial procedures in immigration cases could be helpful. He further suggested that a consolidated record of the immigration case would be useful.

D. Judges panel

1. Joseph W. Monsanto, Acting Chief Immigration Judge, INS;
2. Maurice Roberts, former Chief Judge, Board of Immigration Appeals, and Editor, "Interpreter Releases";
3. Ralph Farb, former member, Board of Immigration Appeals;
4. Anthony de Gaeto, President, Association of Immigration Judges.

Statements

1. Mr. Monsanto indicated that a few cases involving difficult questions of law or discretionary judgments require a significant portion of an immigration judge's time. He said that determining eligibility for asylum or withholding of deportation are difficult and time-consuming questions and that it can be anticipated that a large percentage of unsuccessful asylum applicants will at some point appear before an immigration judge. He said that he is not optimistic that the asylum cases will be speedily adjudicated due to such problems as scheduling difficulties, the time required to obtain advisory opinions, and legal challenges. He supported the Administration's proposal of placing asylum questions in the hands of asylum officers. He also indicated he believes immigration judges should remain a part of the administrative law process.

2. Mr. Roberts said that he believes the immigration judges and the BIA should be freed from outside influences and the adjudication procedure should be streamlined. He suggested that immigration judges be put into an independent body, possibly with the BIA, completely outside the DOJ. He indicated that he supports the idea of an immigration court because the BIA may not rule on constitutional issues, and because decisions of the BIA are reviewed in Courts of Appeal, many of which differ. He said an Article I court would eliminate layering of review and expedite final disposition of hearings while providing for a due process trial and an appeal.

3. Mr. Farb said that because members of the BIA serve at the pleasure of the Attorney General, decisions of the Board can be criticized as having been influenced by that relationship. He indicated that he opposes putting immigration judges in an immigra-

tion court because important aspects of the administrative process would be lost. He said he favors making them administrative law judges under the Administrative Procedures Act. He said he contemplates an organization which would have its base in the BIA or INS so that a support system would exist. He indicated that a separate support system for an independent trial bench would be a waste. He said that currently immigration judges are not accountable to district directors but that they do depend on the directors for services and that tensions arise when there is a shortage of services.

4. Mr. de Gaeto said that the immigration judges would like to be removed from INS. He indicated that currently they lack resources to carry out hearings; are denied the protections afforded adminstrative law judges; and are vulnerable to criticism that their hearings are tainted because of alleged interference by INS, one of the parties to the proceedings. He also indicated that direct and indirect pressure is brought to bear on the judges by personnel in the enforcement chain of command. He said they favor creation of an independent court under Article I, containing both trial and appellate parts. He said that complete removal from DOJ is the only way to assure judges' independence. He said they support, secondarily, the establishment of a commission under the Administrative Procedures Act, not linked to any existing agency or department of the government, with trial and appellate functions.

Questions: In response to questions from Senator Simpson, Judge Monsanto indicated that he believes there should be a distinction between service and enforcement in INS, but that they should not be separated. He also indicated that judges need to be separated from the service and enforcement functions because they are required to be impartial in their determination and that may be in conflict, for example, with those in enforcement who have arrested the alien. He described a training program he had arranged for immigration judges to help them learn methods to expedite cases. He indicated that he believes an immigration court need not be expensive; that as a two-layer system, it would expedite the processing of cases and need not be parochial. He said one body is needed to "harmonize the law" rather than using courts of appeal which might reflect different points of view. He indicated that he believes the action of district directors should be reviewed within the Service as is currently done, though important issues should be subject to review by BIA. He said he didn't know if, in instituting an Article I court, habeas corpus review could be eliminated. Judge Farb agreed that the BIA should not review all actions of the district directors and also supported Judge Monsanto's views on the roles of the BIA and courts of appeal. Judge Farb indicated that he favors lengthy terms, such as 15 years, for judges appointed to the BIA or its successor. In response to Senator Simpson, he said he believes certification to the Attorney General should be abolished.

Senator Simpson asked Judge de Gaeto how relations between adjudication officials, judges, and enforcement officials in INS might be improved. Judge de Gaeto responded that he has submitted a proposal for restructuring the immigration court within INS as a stop-gap measure to the INS Commissioner. The proposal suggests that the judges be under the Commissioner's office but have an independent budget. In response to further questions from Senator Simpson, he indicated that he believes there should be an appeal level after decisions have been made by immigration judges. On the question of accountability of judges, he said that they are not against accountability but against accountability to one of the parties to the action. He indicated that they would favor peer review. In response to questions from Senator Simpson, Judges de Gaeto and Monsanto described the lack of personnel and equipment as adversely affecting the judges.

VIII. OCTOBER 22, 1981, HEARING ON "TEMPORARY WORKERS"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (Chairman of the Subcommittee), presiding.

Present: Senators Simpson and Grassley.

A. Opening statement by Senator Simpson

Senator Simpson stated that the issue of foreign temporary workers was one of the most controversial reform proposals before the Congress, with deep divisions between employers' groups, which favored them; and organized labor, minority groups, and church organizations, which opposed them. He said that the nation's historical ambivalence about enforcing its immigration laws had led to some sectors of the economy, particularly in the Southwest, becoming dependent on illegal workers. The Senator noted that in considering whether a temporary worker program should be part of the overall reform package, it was important "to weigh the potential short-term economic benefits of such a proposal against the potential long-range social dangers that might result." He observed that U.S. experience with the bracero program raised questions about whether temporary worker programs create an incentive for illegal immigration, and referred also to Western European experience with guest workers not returning home. Some of the issues that had to be considered were whether the conditions and limits of a temporary worker program can realistically be enforced, whether alien temporary workers would displace or otherwise adversely affect U.S. workers, and whether such a program would create an underclass. Senator Simpson closed by saying that he thought it was "quite clear that the American people are no longer going to tolerate the out-of-control immigration policies which have been characteristic of our recent past."

B. Administration panel

1. Alan C. Nelson, Deputy Commissioner, Immigration and Naturalization Service (INS), Department of Justice;
2. Frank Crigler, Director, Office of Mexican Affairs, Department of State;
3. Robert W. Searby, Deputy Undersecretary for International Affairs, Department of Labor;
4. A. James Barnes, General Counsel, Department of Agriculture.

Statements

1. Alan Nelson emphasized that the temporary worker program proposed by the Reagan Administration was part of an overall package. He said that we already have a temporary worker program consisting of millions of illegal immigrants; the intent is to shift from illegal migration to legal migration, to eliminate exploitation, and to make it clear that it's illegal to hire illegal aliens. He stressed the experimental nature of the 2-year program under which 50,000 Mexicans would enter annually, based on determinations of need by State governors. He indicated that the program was not meant to displace or replace the H-2 program, where the Secretary of Labor has more of a role, but to supplement it and see whether one is more effective than the other. The ability of the workers to change jobs under the proposed program is a significant difference between it and the H-2 program. Mr. Nelson noted that the INS would play a role in the new program regarding entry, enforcement of the 12-month maximum time, and tracking departure.

2. Mr. Crigler underscored that the temporary worker program was part of a larger package, and indicated that it was aimed at regulating the flow, while other measures are more directly aimed at restraint. He said it was a pilot program designed to obtain data on how a larger program would operate now, as opposed to during the different circumstances of the bracero program (1942-1964).

Mr. Crigler said that the role of the State Department in the proposed temporary worker program consists of two aspects. The first "fairly routine" aspect is the role of the consular officer, who would receive validated work offers from the respective States in the United States, interview applicants who applied at this consulate for a visa, and adjudicate their applications. He said the second and broader aspect has to do with the political relationship between the United States and Mexico in setting up and operating the program. He indicated there was ambivalence in Mexico about such a program, and that they had made no formal statement of approval yet. Additionally, past experience indicates that they will require a bilateral agreement focusing on the protection of Mexicans' rights while in the United States, and covering wages, working conditions, and the "terms under which contractors would hire those workers in Mexico."

3. Mr. Searby stressed that the various proposals in the Administration's immigration reform package constituted "an organically unified policy." From a labor market perspective, the large-scale legalization program and the small-scale experimental foreign worker program are both intended to cushion the "otherwise substantial labor market adjustments" in both the United States and Mexico resulting from employer sanctions and increased labor law enforcement. He said that under the 2-year program proposed by the Administration, Mexican nationals would be admitted for skilled and unskilled, and temporary and permanent jobs, for which there is not an adequate supply of qualified and available U.S. workers, as determined by the States. The role of the Labor Department would be, first, to allocate the 50,000 workers among the States based on their estimates of need; and second, to evaluate the program upon its completion. This evaluation will be the basis

for a decision whether to continue or expand the program in the future.

4. Mr. Barnes said that the resolution of the immigration problem was important to agriculture because of the significant use made by agriculture of alien labor on a seasonal basis. He stressed the interrelatedness of the various components of the Administration's package from the point of view of providing an adequate legal work force to the agricultural sector.

Questions: Senator Simpson questioned Mr. Nelson about the trend of the occupations and wage levels of apprehended illegal aliens. Mr. Nelson replied that statistics for the past 3 years showed that, while about 40 percent of the apprehended aliens were in agriculture, the percentage there was declining, and that about 60 percent earned more than the minimum wage. Mr. Barnes subsequently indicated that their best estimate of the number of illegals employed in agriculture was 300,000 to 500,000, most of them on a seasonal or short-term basis. The domestic migrant labor force was estimated at about 200,000, meaning as Senator Simpson observed, that illegal workers "outnumber the U.S. migrant workers perhaps even two to one."

A series of questions were asked about the administration of the program. Mr. Nelson and Mr. Crigler said that, while they were avoiding the petitioning aspects of the H-2 program, the visa procedures involved and the division of labor between State and Justice would be basically similar to what they are now: consular officers would adjudicate visa applications, and INS would check border entry, etc. Senator Simpson questioned INS' ability to successfully monitor the program in view of its present difficulties in monitoring nonimmigrant departure. Mr. Nelson responded that the difference would be that they would also have employer sanctions plus more efficient border enforcement.

Other related questions concerned the role of the States and of the Mexican Government. Regarding the significant role of the State governors in determining need, Mr. Searby said that the proposal calls for a "federalist approach," based on the assumption "that the authority closest to the situation should have both the right and the responsibility" to make judgments on availability of labor. Senator Simpson subsequently agreed in principle, saying, "I think the governor and the legislature will know the labor needs of the State better than the Department of Labor." Discussing the role of the Mexican Government, Mr. Crigler said that while there was nothing intrinsic in the legislation requiring a formal agreement with Mexico, historical experience led him to believe Mexico would seek a bilateral agreement, as it did under the bracero program, to protect the individual rights of Mexican workers. He said no negotiations were going on at present. The Senator's impression, which differed from Mr. Crigler's, was that the Mexican Government preferred increased numbers for permanent admission to a temporary worker program.

There was considerable discussion of the relation of the proposed pilot temporary worker program to the existing H-2 program, and the differences between the two. Mr. Searby said that "the H-2 is definitely geared to labor market needs, while the temporary worker program is geared to the illegal immigration phenomenon."

He noted that in the latter program, they were attempting to "make a small-scale legal substitute for the Mexican illegal immigration." It was intended both as a small cushion, linked to the much larger legalization program, for labor market disruptions resulting from employer sanctions; and as a test of the "administrative feasibility and the labor market impact of a minimally regulated program for the legal admission of Mexican temporary workers." He noted that it was specifically designed to be different from the H-2 program, which was "why it needs to be experimental, monitored and evaluated." The witnesses stressed that a principal difference between the two programs was the comparative freedom of workers to move around in the labor market under the new program.

It was pointed out that the H-2 and the proposed program were about comparable in size, with 43,000 H-2s admitted last year. Mr. Searby said that the average number of H-2s certified over the past 5 years was 30,392, and it had increased each year: 38,197 were certified in 1979, and 43,066 were certified in 1980. In 1980, 18,371 were certified for agriculture, and 24,695 were certified for non-agricultural employment. Mr. Barnes subsequently indicated that some people came in for more than one employer during a year, and he thought the figure was closer to 12,000 than 18,000 for agriculture. He predicted that the requests for H-2s in agriculture would increase if employers were required to use legal workers, and responded in the affirmative to a question as to whether a streamlined H-2 program could address the labor shortages in agriculture.

In response to a question about the European experience with guest worker programs, Mr. Searby noted that "the Administration's temporary worker proposal was developed with the deleterious effects of the European experience in mind." He referred specifically to the proposed ban against family members, the requirement that workers go home at the end of the year and return here only to an approved job, and the ineligibility of the workers for unemployment compensation and other benefits under the proposed U.S. program.

Senator Simpson commented on the popular perception that the purpose of "the temporary worker program is to help people who have been dependent on cheap labor," and subsequently asked Mr. Barnes how he responded to the assertion "that once employers get experience with a foreign worker, they come to prefer them over U.S. workers and therefore find ways to discourage U.S. workers from applying for jobs." Mr. Barnes replied that he had "not seen evidence of that. The overwhelming preoccupation that I find from employers in the agricultural sector is that they have available adequate labor when they need it. * * * It is that fact much more than whether the workers are foreign or domestic that is the major consideration to them." He noted that some of the more delicate crops and agricultural functions were likely to remain labor intensive, and that it was important that the United States remain competitive with the rest of the world or production of some crops could be driven out of the country, as has happened with tomatoes.

Senator Simpson asked Mr. Searby what the Department of Labor was doing to protect disadvantaged U.S. workers in conjunction with its recommendation in favor of the temporary worker program. Mr. Searby replied that the greatest disadvantage these workers faced was "the illegal phenomenon of enormous proportions," and that the temporary worker program was part of a package aimed at curtailing illegal immigration. He also noted that the foreign workers would be admitted only where the governors of participating States had determined there was an inadequate supply of labor. Senator Simpson inquired as to whether the temporary worker program might not actually increase illegal immigration. Mr. Nelson said that, unlike in the days of the bracero program, they would have employer sanctions and avenues for substantial legal migration.

C. Hon. Harrison Schmitt, U.S. Senator from New Mexico, statement

Senator Schmitt stated that the Administration's proposal for allowing in 50,000 Mexicans each year for 2 years was "insignificant compared to the problem," and invalid as a test of such a program. He said that the estimates indicate we have an illegal guest worker program involving one to two million migratory workers moving back and forth across our borders annually and working primarily, although not exclusively, in "the low-skilled, unskilled occupations that the U.S. workers no longer seeks because of the safety net." He indicated that this illegal program is a continuation of the various legal and illegal guest worker programs which have been in effect since there has been a U.S.-Mexican border. These programs have benefited both countries, among other things, by providing vocational training for Mexicans and filling U.S. labor shortages in low-skilled areas. Senator Schmitt said that his bill, S. 47, the U.S.-Mexican Good Neighbor Act, generally addresses the problem of the illegal migratory flow, noting that it might be amended to allow specific employment sites to be designated off-limits because of an adequate U.S. labor supply. He argued that there is an economic benefit in establishing a realistic program, in contrast to the Administration's, and that it represents a humane solution by removing the incentives for smugglers of illegal aliens.

Questions: Senator Simpson questioned Senator Schmitt about the number of temporary workers necessary to curtail illegal immigration. Senator Schmitt replied that we do not know, that S. 47 provides for the determination of such a number through actual experience, and that he personally estimated that the number would end up somewhere between one and two million. Senator Simpson noted that the Census Bureau had estimated that no more than 60 percent of the illegal alien population is Mexican, and questioned how effectively an agreement limited to Mexico addressed the problem. Senator Schmitt replied that he considered our immigration problem to have three facets: (1) political refugees, (2) nonmigratory illegal residents, and (3) illegal migratory workers. He said S. 47 addressed this illegal migration, most of which was by Mexican nationals over our southern border.

Senator Grassley questioned Senator Schmitt about some of the disadvantages of the Senator's proposed large-scale temporary worker program as discussed in the Staff Report of the Select Commission on Immigration and Refugee Policy. Senator Schmitt agreed with one criticism, that issuing visas in Mexico might contribute to the formation of new migrant streams, and said he was considering modifying the bill to provide that the control of the visa issuance would be entirely in this country. Regarding the charge that INS manpower is insufficient to administer such a program, Senator Schmitt replied that his guest worker program would decrease the INS workload, as opposed to the Select Commission's recommendations for stricter enforcement and employer sanctions, which would increase it. In answer to another question, Senator Schmitt said he was convinced that the migrant flow would remain temporary, that Mexican workers would return home because "they love Mexico, they are nationalistic, their families' roots are Mexico, and there is a tremendous pull back once the temporary economic crisis has been met." He also said that the guest worker program "can only be viewed as a short-term treatment of an extremely long-term problem," and that we should assist Mexico in increasing employment opportunities. In the meantime, we must recognize that 50 percent of Mexico's population is 15 years or younger; sealing the border will mean greater conflict with Mexico, and put U.S. farmers and businessmen who depend on the availability of Mexican labor out of business.

D. Hon. S. I. Hayakawa, U.S. Senator from California, statement

Senator Hayakawa said that the Administration's immigration package was an important first step, but that the proposed guest worker program did not attack the underlying problem of uncontrolled immigration from the south. He said the cause of the problem was very simple: "The Mexicans need jobs and there are jobs to be found in the United States." He said Mexican unemployment and underemployment were estimated by the State Department at about 40 percent, and that they came here and took jobs that many Americans didn't want. He noted the Administration's sanctions proposal against employers who hire illegal aliens, and said "perhaps sanctions are necessary to encourage participation in a guest worker program, but they must be accompanied by a legal work force large enough to meet employer needs." He said California farmers wrote to him constantly about labor shortages, and that over 100,000 people are needed to harvest the raisin crop in Fresno County alone. In his opinion, the 50,000 temporary workers proposed by the Administration combined with employer sanctions would be punishing U.S. farmers and businessmen for an inadequate work force, a problem beyond their control.

Senator Hayakawa said his bill, the Guest Worker Act of 1981, introduced in the 97th Congress as S. 930, provided a workable alternative to current uncontrolled illegal immigration. He noted that it recognizes the fact that migration over the border will continue as long as the wide economic disparity continues. His bill would provide for the issuance of up to one million visas annually to Mexican nationals, permitting them to enter for up to 6 months in an experimental program, set for 5 years. The workers would not be limited to a particular place of employment, as they were under the bracero program, but they may not be hired where a determination has been made that there is an adequate supply of U.S. workers. He said that, in addition to benefitting the workers, their mobility would make them available on short notice, a benefit for agriculture. Each guest worker would be required to post a bond which would be returned with interest at the prevailing rate upon his departure, thus creating an incentive to leave.

Questions: Senator Simpson noted, as he had earlier in the day, that only agricultural employers had expressed an interest in testifying in support of a temporary worker program, and asked Senator Hayakawa if he had encountered any organized interest among other employer groups. Senator Hayakawa agreed that it was "puzzling that agriculture and agricultural interests are the principal people interested in the guest worker program." He said one reason for this was that INS concentrated on agriculture in its enforcement efforts, not "because they do not like farmers, but they can get a better service record for capturing more illegals by raiding the farms" than, for instance, restaurants. However, Senator Hayakawa reported that it was widely said, and he believed it, that if every illegal Mexican in Los Angeles were thrown out of the restaurants, hotels, and other service industries, "the day after tomorrow every restaurant and hotel in Los Angeles would be closed for lack of service." However, these employers were less concerned now because INS wasn't raiding them.

E. Panel

1. John Etchepare, President, Western Range Association;
2. Fred Heringer, President, California Farm Bureau Federation; Member, American Farm Bureau Federation Board of Directors.

1. John Etchepare said the Western Range Association had three areas of concern with the Administration's proposal, focusing on employer penalties, the experimental guestworker program, and the H-2 program. He said that while they did not oppose penalties for people who employed undocumented workers, they must be accompanied by a much more functional H-2 program, because "sanctions are going to cause some real problems." He said that 90 percent of the herders they employed were of Mexican background, and that the majority of them did not have identification—they'd lost it or had it stolen, and replacing it took one to two months. On the other hand, illegal aliens did have identification, including a social security card, although not necessarily a valid one. He said sanctions would displace U.S. workers, and that it was essential that they have a legal temporary worker program that "functions rapidly," unlike the current H-2 program. He also said the experimental guestworker program would not solve their problem, which was "the lack of available qualified domestic sheepherders," because it is strictly temporary and would not provide the necessary time to train sheepherders to the point where they were valuable.

2. Fred Heringer itemized 12 principles as a guide for a foreign worker program, and said they were embodied in H.R. 4795, introduced in the 97th Congress by Congressman Pashayan. He said the bill was based on the concept of the H-2 provision with the addition of a revised version of the Department of Labor regulations, 20 CFR 655. The bill would designate the Secretary of Agriculture to administer the program, rather than the Secretary of Labor. Mr.

Heringer said they had reason to doubt that the Department of Labor was capable of administering a program that was responsive to the needs of agriculture. He said H.R. 4795 would provide the kind of workable program needed in agriculture, amply protect foreign workers, not replace U.S. workers, and serve the public interest by reducing illegal immigration and assuring that the alien workers would return home at the end of their temporary employment.

Questions: In response to questioning, Mr. Etchepare said that sheepherders earned between $600-$625 a month, and that it was harder to find domestic sheepherders now than it was 18 years ago, when they earned approximately $180-$200 a month. He said that wages weren't the problem, that sheepherders were probably among the highest paid workers in agriculture, but that sheepherding was a way of life and people were not interested in living off the land anymore. He said there was a standing job offer for domestic sheepherders, and that training was underway, including an effort by the Wyoming Wool Growers Association to set up a sheepherders school at the University of Wyoming. He noted that the people who come from other countries were "still very close to the land," and that sheepherding was well-respected in Peru, Mexico, and Spain, but they earned much more here. At a subsequent point, Mr. Etchepare said that cowboys were increasingly of Hispanic origin; Senator Simpson noted the historic irony of this, "since the Spanish and their ancestors were the first cowboys."

Also commenting on the extended downward trend in the size of the U.S. migrant labor force, Mr. Heringer said that "ever since the day we had an agricultural society," U.S. workers have moved from agriculture to industry because of better conditions and higher returns. He noted, however, that while there were many more illegals in service occupations and industry, they were presently moving to agriculture in California because they could make as much money under the piece rates and hourly rates as they could in other occupations.

Mr. Heringer was not confident that the Administration's legalization program would supply an adequate pool of labor for agriculture, and he clearly did not believe the proposed temporary worker program would meet their needs. In response to a question as to whether foreign workers "are far more productive and hence more desirable than U.S. workers," he responded that they were more productive, generally because of their experience in farming. However, regarding desirability, he said "people are looked upon as people in our labor force, and desirability is not a point in question."

F. Panel

1. Abelardo Perez, Legal Counsel, National Association of Farmworker Organizations;
2. Peter Allstrom, Director of Research, Food and Beverages Trade Department, AFL-CIO;
3. Garry Geffert, Legal Counsel, West Virginia Legal Services Plan, Inc.; accompanied by Michael Semler, Migrant Legal Actions Program;

4. Arnoldo S. Torres, Executive Director, League of United Latin American Citizens (LULAC).

Statements

1. Abelardo Perez said the National Association of Farmworkers Organizations had a long history of involvement with immigration issues, particularly guest worker programs. He said such programs "invariably have a devastating impact on the 5 million domestic migrants and seasonal farmworkers and their dependents." He stated that such programs must be based on "logical and compelling reasons," such as protecting the national interest in war or meeting severe worker shortages, and that these conditions did not now exist. Using government charts, he indicated that agriculture was the only industry with a projected decline in employment opportunities in the 1980s, and noted that it had decreased by two-fifths since the 1960s, and was expected to decline through the 1990s. He said Labor Department figures projected a need for 2.5 million farmworkers by 1990, and that there were 3.7 million persons employed in farmwork in 1979, more than enough to meet that need. He predicted that the trend since the 1950s in the direction of reduced job opportunities in agriculture in the United States and all industrialized countries would continue, "because of increased mechanization, sophisticated technology, and a breakthrough in genetic engineering."

2. Peter Allstrom said that the Food and Beverage Trades Department, AFL-CIO, represented 13 unions and 3.2 million members, many of whom were greatly disadvantaged by illegal immigration. He indicated that while his organization supported a national immigration policy, it believed it would be a "grave mistake" to include "a large temporary guest worker program" in the package. He cited the current unemployment rate of 7.5 percent, and noted that the rate was much higher—up to 40 percent—among youth and minority groups, the population most likely to compete with imported workers. He argued against a temporary worker program on the grounds that it would be an unfair subsidy, and noted also that the workers would be here for too short a time for the proposed labor law guarantees to be effectively enforced. He stated that there was "almost a total lack of enthusiasm among leaders of the Mexican Government" for a temporary worker program. He also noted that the program was being proposed in conjunction with the Administration's legalization program which would involve unknown numbers of people, and that there was no basis for determining the need for temporary workers. Additionally, he argued that past temporary worker programs here and abroad have failed.

3. Garry Geffert testified that through his legal practice he had had first hand experience with "the effects on U.S. workers of temporary foreign worker programs and sanctions on employers who hire undocumented alien workers," and described the "inability of U.S. workers to get jobs and the depression of their wages." He said that in Martinsburg, West Virginia, many apple picking jobs were effectively closed to U.S. workers. About 50 of the 140 apple orchards in one area obtain their labor from one farm labor contractor who employs almost exclusively Jamaican nationals

brought in under the H-2 program. Mr. Geffert said he represented 19 workers, 13 of whom were Haitian refugees authorized to work by INS. They were all refused employment in Martinsburg "because they could not prove their citizenship to the satisfaction of the employer. That result stems from the deliberate misuse of the prohibition in the Farm Labor Contractor Registration Act against the hiring of undocumented workers by farm labor contractors." He reported being told that generally farm labor contractors who hired domestic workers helped them get the necessary work documents, while those who hired H-2 workers did not. He also described the production quota, where domestic workers were given the least desirable picking areas and were quickly fired because they failed to meet the quota, thereby saving the employer their transportation cost. He stated that the adverse effect wage rate, intended to protect domestic workers from adverse competition from foreign workers, was not being fairly administered in West Virginia, and that wages were being kept artificially low by the presence of H-2 workers.

2. Arnold Torres indicated that LULAC did not see the need for the additional temporary worker program. He questioned how it contributed to the Administration's aim to regain control over unlawful entry, and suggested that the program was being tailored for one or two Southwest governors who want control over who comes in. He said he thought there was a definite need for some specialized labor, such as sheepherders, but that this need could be met by the H-2 program when American labor could not be retrained and relocated to meet it.

Questions: Senator Simpson questioned Mr. Perez on his testimony that there were fiscal incentives which encouraged the use of H-2 workers, and asked specifically about the adverse effect wage rate. Mr. Perez replied that there were certain benefits which employers were not required to pay foreign workers, which lowered their cost. Mr. Semler explained the adverse effect wage rate as an attempt to offset the downward pressure on wages resulting from bringing in an expanded number of workers, indicating that "each employer must ensure that each worker, domestic or foreign, who works for the H-2 employer receives that at least each hour." He said that while it was generally above the Federal minimum wage, it was set on a statewide basis and did not reflect variations in crops.

There was some discussion of the use of the legalization program to provide a transitional work force to cushion the loss of the illegal work force, but Senator Simpson and Mr. Allstrom agreed that there were problems about the rights of the people involved, and that if the program were too confusing people would continue with business as usual. Senator Simpson subsequently questioned Mr. Semler as to whether he believed participants in a legalization program would leave their current illegal employment, necessitating an additional transitional work force. Mr. Semler replied that the thought it was "a function of wage rates," and that if, as someone had argued earlier, workers were making more in California agriculture than they could earn in other occupations, they would stay in agriculture. Mr. Torres questioned whether in fact the wage rates in agriculture were equivalent to those in industry, noting that migrant workers in Northern California were going into the canneries because they were unionized and paid a higher wage. Mr. Torres said that he thought it was "a fallacy to depend on the legalization program as a temporary worker program."

In a discussion of ways to improve temporary worker programs, including the H-2 program, Mr. Semler argued that there was a need to regulate recruitment in the foreign country, that this was done to some extent during the bracero program, but "right now only one-half of the system is being regulated, and that is the U.S. recruitment." In answer to a question about his views on contracts, Mr. Semler said that while he was generally opposed to a temporary worker program, if its purpose was to meet a specific labor shortage, it made sense to recruit for a particular job and put the worker in it.

Mr. Torres expressed some sympathy for the type of program outlined earlier by Senator Schmitt, saying that he was "talking about an established historical flow of migratory labor from the country of Mexico to this country. Somehow that must be addressed in this immigration policy." However, Mr. Torres was generally opposed to a temporary worker program, and he doubted the commitment to the protection of people's rights.

G. Panel

1. David Gregory, Associate Professor, Dartmouth University;
2. Craig Frederickson, Administrator, Community Research Associates, Inc., San Diego, California;
3. Mark Miller, University of Delaware.

Statements

1. David Gregory said that we have a temporary worker program, and the issue is whether or not we want to legalize it. He identified as positive aspects of the Administration's proposal the fact that it was an attempt to reduce illegal immigration and to increase legal opportunities for entry, and that it "focuses on our bilateral interest with Mexico." On the negative side, he said 50,000 was too small a number and, at the same time, it was inappropriate to recruit 50,000 new workers from Mexico in view of our economic recession. He suggested instead that we recruit from Mexicans already here, for instance giving those who had been here before January 1, 1980, the option of permanent or temporary status. He also said that it was a mistake to bar people from converting from temporary to permanent status after a number of years, that a certain "leakage into permanence" was important and should continue.

2. Craig Frederickson said that two back-to-back studies conducted by Community Research Associates in the County of San Diego, California addressed on a regional level the questions of whether there was a labor shortage, and whether foreign labor would help fill it, or would contribute to the displacement of domestic labor and the current unemployment rate. The first study, "Undocumented Immigrants, Their Impact on the County of San Diego," showed that "slightly under 10 percent of the regional unemployment rate could be related directly to the presence of undocumented workers in the San Diego labor market." It also showed that re-

moval of the undocumented workers would disrupt both agriculture and tourism, with 50-62 percent of the agriculture jobs and 3-9 percent of the tourism jobs going unfilled. However, this study ignored the role of employer preference in the hiring process and failed to address the question of how many firms would be unprofitable if they could not employ undocumented workers.

A second study, "The Employer's View: Implications for a Guest Worker Program," involved interviews with employers in agriculture, restaurants, and electronic manufacturing. While the employers preferred foreign workers to domestic workers, the study showed that employers could generally afford to subtitute domestic workers for undocumented workers. They concluded that on the basis of need alone, a guest worker program could not be justified for San Diego County, except in a very limited way for agriculture. Mr. Frederickson concluded by asking, in the event of a temporary worker program, "what would legislators do with the discarded American workers?"

3. Mark Miller from the University of Delaware was unenthusiastic about expanding a temporary worker program, based on experience both here and in Western Europe. He said that, unlike the United States, European countries did not welcome permanent immigration, and that they had admitted guest workers for permanent jobs, but with temporary work and residency permits. While most foreign workers returned home, a "large fraction" remained. The European experience cast doubt both on the assumption that migrants want to return home, and on the practice of admitting aliens for permanent type work on a temporary basis. He said the French and Swiss also had seasonal worker programs involving temporary admissions for temporary work; "the seasonal work force lives at the margin of European society, but relatively few seasonal workers leaked into permanence." Given a choice between this latter type of program that admits workers on a short-term basis for short-term jobs, and a European-style guest worker program that attempts to shuttle alien workers through permanent jobs, he would opt for the former, although he was "decidedly pessimistic as to the wisdom of any expansion of the temporary foreign worker policy."

Questions: Senator Simpson questioned Mr. Gregory on his generally positive view of Western European guest worker programs, noting that most commentary was negative. Mr. Gregory replied that, first, Europe's economic expansion after World War II would not have occurred without the foreign labor. He also stated that the programs had a beneficial effect on many of the workers involved. He said that type of immigration "has its social costs as well as its economic benefits," and that generally the social limits were reached before the economic limits. Regarding the danger of the development of an underclass, particularly for the second generation, he recommended "equal treatment under the law, as well as providing them with the proper educational facilities," in contrast to conditions under bracero or H-2 programs.

In subsequent related questioning, Senator Simpson asked Mr. Miller about sociopolitical tensions resulting from guest worker programs. Mr. Miller identified four types: (1) problems of discrimination and racism towards the foreign workers; (2) foreign workers were blamed, "largely uncorrectly," for high rates of domestic worker unemployment; (3) a certain tension in bilateral relations because of alleged mistreatment of the foreign workers, e.g., under the Franco-Algerian program; and (4) the natives felt threatened by large and growing migrant populations.

Senator Simpson enquired again why only agricultural employers had been interested in testifying on the issue of temporary workers. Mr. Gregory said that it was "a no-win position for management or for business," and that support of such a program would risk disagreement with domestic workers and unions. He also said employers didn't really understand the proposed temporary worker program, and they couldn't come out against it because they were already benefitting from the illegal variant. He also said employers didn't want to deal with the related issues of employer sanctions and contracts. Mr. Frederickson said employers didn't really think undocumented workers were going to cut off. He said they had interviewed some restaurant owners, and "a guest worker program was a bureaucratic kind of thing as seen by these restaurant owners that was going to interfere with their ability to get workers."

Senator Simpson asked whether there was another alternative to accepting "the existing level of dependence on foreign labor, whether or not it is legalized? Should we not seek to make extraordinary and significant efforts to provide jobs to Americans first?" He suggested that many of our past advances in productivity and technology might not have occurred if we had allowed industries in the past to employ cheaper foreign labor. Mr. Gregory agreed, but he said there was a potential for a great deal of growth in the Southwest border region, and a lack of the young workers necessary for industrial expansion.

In a discussion of a transitional program for employers who have been dependent on illegal labor, Mr. Miller said that he thought "that that would be the major justification for an expanded temporary foreign worker program," as a cushion for employers during a transition period. He also elaborated on the distinction he had made before between the seasonal worker programs of France and Switzerland, and the more common Western European guest worker programs: "seasonal workers are admitted for periods of time less than one year and are required administratively to return home each year. Guest workers, on the other hand, by and large were not required through administrative procedures to return home." There was a "systematic renewal of permits throughout the post-World War II period up until 1975 when Europeans started to rethink the guest worker policy in general," and closed off the flow of guest workers.

IX. OCTOBER 29, 1981, HEARING ON "LEGALIZATION"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (Chairman of the Subcommittee), presiding.

Present: Senators Simpson, Grassley, and DeConcini.

A. Opening statement by Senator Simpson

Senator Simpson reiterated the need for a three-pronged effort, consisting of employer sanctions, a secure worker identifier, and increased border and interior enforcement, as the most workable means for reducing future illegal immigration. At the same time, he recognized the need to deal with some portion of the millions of illegal immigrants already here who presumably would not be reached by an employer sanctions program focusing on new hires, who are here in part because of our historical ambivalence about enforcing immigration laws, and who are generally believed to be conscientious and productive residents. He expressed his conviction that the legalization of a certain portion of the undocumented population is in the national interest, and that massive roundups—"the mistakes of the past"—are not.

While indicating support for the administration's general policy on the need for a legalization program, Senator Simpson outlined specific issues for examination, as follows: (1) the timing of legalization with respect to enforcement efforts; (2) the residency requirements and needed proof; (3) the handling of family reunification; (4) the equity of the legalization program with regard to those waiting in backlogs for visas; (5) the impact of the legalized population on local government services, as well as the rights and responsibilities of this population; and (6) the ability of INS to implement the program with existing resources.

B. Administration panel

1. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service (INS), Department of Justice;
2. Diego Asencio, Assistant Secretary for Consular Affairs, Department of State;
3. Wilford Forbush, Deputy Assistant Secretary for Health-Operations, Public Health Service, Department of Health and Human Services; accompanied by Linda McMahon;
4. Manuel Iglesias, Special Assistant to the General Counsel, Department of Agriculture (USDA).

Statements

1. Doris Meissner briefly outlined the provisions of title I of the Administration bill (S. 1765/H.R. 4832) which provides for temporary resident status for certain aliens illegally in the United States. She said they would support such a program only in conjunction with employer sanctions and stronger enforcement. Under the Administration's proposal, aliens who could show they were here prior to January 1, 1980 would be eligible for a new temporary resident alien status, and would be eligible to adjust to permanent resident status 10 years after they originally entered the United States. Temporary residents would be eligible to work in the United States and to travel freely in and out of the country. They would not be eligible for any federally-funded benefit programs such as AFDC, SSI, subsidized housing, food stamps, medicaid, etc. Registration for the temporary resident program would be limited to a 12-month period.

Ms. Meissner indicated that the administration and implementation of the legalization program were still in the planning stages, although some decisions have been made. Implementation will involve substantial involvement of voluntary agencies as does the current operation of the refugee programs; it will be as inclusive as possible in order to insure maximum participation; and it will operate on a free basis.

2. Diego Asencio agreed with the Chairman's opening comment that legalization was the only tenable solution, as opposed to the "unthinkable" alternatives of a sweep or raid, or "not doing anything" with the illegal population. He also commented on the need for an overall approach; and the desirability, from the point of view of the consular service's workload, of a relatively extended period prior to their eligibility for permanent status because of the subsequent benefits their relatives will receive in terms of being able to enter the United States.

3. Wilford Forbush stated that they believed the Administration's legalization program would not have a substantial impact on the health care system because the population is here and receiving some care now. He expected that people covered by some health insurance would be less reluctant to claim their benefits, and that more people would probably obtain health insurance, resulting in improved health care.

Mr. Forbush noted that there would be no change regarding payment of Social Security benefits, since illegal aliens are already eligible for Social Security after the required contributions from covered employment. The temporary residents would not be eligible for public welfare benefits except in the case of those who acquired a disability because of work in the United States.

4. Manuel Iglesias commented on the importance of the legalization program to the sector of the economy for which the USDA has primary responsibility. He noted that the agricultural sector relies heavily on "migrant labor, mostly aliens, during the critical harvest season." He expressed the opinion that the Administration's proposal was responsive to the need to control illegal immigration while maintaining opportunities for aliens to work lawfully in the United States, and emphasized "the importance to agriculture of a close inter-relationship between the proposed legalization program, the employer sanctions, the temporary worker program, and the current H-2 program."

Questions: A series of questions clustered around the issue of the 10-year residency requirement which the Administration would impose before aliens could apply for permanent resident status. The point was underscored that the 10-year period was retroactive, to include total time spent in the United States. Both Senator Simpson and Senator DeConcini asked the witnesses if, in fact, they were wedded to the 10-year requirement, and Senator Simpson noted the 7-year residence requirement in existing law for suspension of deportation. Senator DeConcini questioned whether it wouldn't be simpler to adjust the aliens immediately to permanent resident status, and Senator Simpson questioned the administrative implications of the requirement that the temporary resident status be renewed at 3-year intervals.

The Administration witnesses defended the 10-year residency requirement on several grounds. Mr. Asencio said "the 10-year period in effect provides the means by which legal status would be earned," a point he reiterated in response to Senator Simpson's question about the equity of legalizing the status of aliens here illegally while other aliens waited in lengthy backlogs for legal admission. Mr. Asencio also noted that an extended lead time had certain administrative advantages, at least from the point of view of the consular service, because of "the follow-on entitlements of relatives." Ms. Meissner justified the 10-year requirement for the regular legalization program as opposed to the 5-year requirement for Cuban/Haitian entrants on the grounds that there was a finite number of Cubans and Haitians—about 160,000, whereas the number who might apply for legalization was unknown. She indicated that there would be a definite data collection component to the legalization program. She also explained that a principal purpose of the 3-year renewal requirement was to determine whether the aliens were employed, and subsequently indicated that aliens in temporary resident status who became public charges would be deported.

Regarding other aspects of the legalization program's implementation, Ms. Meissner said they hoped Congress would write in a delay period of perhaps 6 months between enactment of the bill and program start-up, to allow them time for publicity and other administrative preparations. She expressed optimism about INS' ability to handle the program, noting that they would have a "fresh start" with no inherited records and case problems. She indicated that they would use as inclusive a range of documentary proof as possible, that documents would be copied but not confiscated, and that the continuous residence requirement was similar to that in existing law and "is essentially established by self-declaration of the applicant in an affidavit form." She also indicated that while the temporary worker program was "administratively unrelated" to the legalization program, it was "entirely likely" that aliens here illegally but ineligible for legalization because of their entry after January 1, 1980, might return home and apply for admission as temporary workers. She said there would be no moratorium on enforcement in conjunction with the legalization program, and that they hoped enforcement would encourage eligible aliens to seek legalization.

A number of questions were asked about the nature, numbers, and possible impact of the undocumented population likely to seek legalization. It was noted that the turn-out for recent programs in Canada, Australia, and Venezuela had been disappointingly low, about 30 to 50 percent of the numbers expected, although this might be due to avoidable structural defects in the programs. Ms. Meissner was questioned about the assumption that most undocumented aliens already had family members here. She said the information was based on the limited research done for the Select Commission which showed that 60 to 70 percent of the family members are already in the United States. The Administration witnesses subsequently estimated that each principal alien would have 3 to 4 relatives eligible to enter at some point, but Ms. Meissner noted that "it is very unclear what proportion of that 3 to 4 are already in the United States."

In response to Senator Simpson's question about the English language competency requirement for adjustment to permanent residence, Mr. Asencio said this "was part of the element of earning their way back to a legal status and was a measure of possible integration into the community at large." Ms. Meissner said they were talking about a "minimal English capability," and that it was unlikely that people who had been here 10 years would have any problem. Mr. Iglesias was questioned about the likelihood that legal status would lead aliens to leave agricultural employment. He replied that he doubted it in the short run, by which he meant 10–15 years, but that they saw the H–2 program as a safety valve for agriculture if decreases occur.

Questions were asked about the impact of the undocumented population on public benefit programs, for which they are ineligible and would remain ineligible under the proposed temporary resident status. Mr. Forbush said that we basically don't know what the impact is, but it is thought to be very small on the AFDC and SSI programs. Ms. McMahon indicated that the AFDC quality control system had shown that less than one half of one percent of the participants turned out to be illegal aliens. Mr. Forbush said there was some participation in the public health programs which did not require documentation of residency for participation. It was also pointed out that the Administration proposal did not specifically bar "legalized" aliens from unemployment compensation, and that they would also be eligible for Social Security benefits as illegal aliens are now if they have the required period of covered work.

C. Barbara Sheen Todd, commissioner, Pinellas County, Florida, on behalf of the National Association of Counties (NACo); accompanied by Ronald Gibbs

Statement

Ms. Todd said that "NACo is supportive of a program to legalize the status of illegal aliens currently residing in the United States, provided two conditions are met: one, that safeguards are taken to prevent the entry of additional illegal aliens; and, two, the Federal Government will reimburse State and local governments for any additional costs resulting from such a program." She agreed with the Reagan Administration that mass deportation was neither feasible nor in the national interest, on the grounds of being both inhumane and "extremely costly." However, she said legalization "only makes sense if future influxes of illegal aliens can be prevented."

Ms. Todd emphasized that NACo objected strongly to what they saw as the protection of the Federal Government from the fiscal impact of the Administration's legalization program at the expense of the States and localities, with specific reference to health care, education, and general assistance. She said this was indicative of a general problem with national immigration policies—the Federal Government determines the policies, but the States and localities bear the impact of immigrant and refugee resettlement.

Questions: Senator Simpson prefaced his questions by indicating considerable sensitivity to local governments based on his extensive past experience with them. He noted that to be eligible for legalization, aliens would have to demonstrate they would not be a public charge, and presumably would not qualify for benefits for indigents at the local level. Ms. Todd replied that they would still have an impact on health and education services, and also noted that the Administration had specifically excluded these aliens from participation in Federal benefit programs, and presumably was passing the cost to them. She and Mr. Gibbs both disagreed that most of the aliens were "paying their own way," because of their limited education and because they paid Federal taxes, but very little in local taxes.

D. Panel

1. Honorable Walter Huddleston, U.S. Senator, Kentucky;
2. Lawrence Fuchs, Chairman, American Studies Department, Brandeis University; former Executive Director of the Select Commission on Immigration and Refugee Policy.

Statements

1. Senator Walter Huddleston stated that mass amnesty and mass deportation were not our only options, and that there was considerable public opposition to extending automatic amnesty to illegal aliens. He recommended instead the proposal set forth in Section 7 of his bill, S. 776, which provides a targeted amnesty for certain aliens who have lived here since at least January 1, 1978, and who meet the same standards of admission required of immigrants. He indicated that his major difficulty with the Administration's legalization proposal "is that it is being paired with a proposal for an additional temporary worker program." He suggested that, as a large-scale temporary worker program, the proposed legalization program had the advantage of ensuring a smooth transitional period, particularly for the agricultural, service, and light industry sectors which have employed illegal aliens. He also suggested combining a targeted amnesty, such as that in S. 776, with a traditional guest worker program in order to phase out dependence on an illegel workforce.

Senator Huddleston emphasized "the necessity for a comprehensive ceiling on all legal immigration to the United States," such as that provided by S. 776. He said that if "amnestied illegal immigrants" are to be admitted outside the numerical limits, they should be the last group so admitted.

2. Larry Fuchs reviewed the generally unanimous recommendations of the 16-member Select Commission on Immigration and Refugee Policy regarding legalization, and the reasons for them. He quoted the basic recommendation as follows: "The Select Commission favors a legalization program as part of its enforcement package. The Commission recommends that no one be eligible who was not in the United States before January 1, 1980. The Commission expects Congress to establish a minimum period of continous residency to further establish eligibility. The Commission also recommends that the legalization program not take place until new en-

forcement measures for curbing illegal migration have been instituted."

Mr. Fuchs noted that the major distinction between the Select Commission's approach, as opposed to the programs proposed by the Carter and Reagan Administrations, was that the Commission wanted "to end the underclass status of most illegal aliens for the good of American society and to prevent future flows, not just to confer a benefit to those who have been here for a long time or to provide a new category of alien temporary workers who would not be subject to the same obligations and rights as resident aliens." He urged the Committee to follow the Select Commission's recommendations.

Questions: [Senator Simpson's questioning was limited to Mr. Fuchs, since Senator Huddleston had to leave.]

Senator Simpson and Mr. Fuchs discussed the timing of legalization and enforcement measures, with Senator Simpson indicating a preference for having the enforcement measures in place before beginning legalization. Mr. Fuchs said, first, that he considered the legalization program to be an integral part of the control program; and second, that he had in mind simultaneous enactment of the whole package, but actual implementation of the 12-month legalization program "about 6 months after the new measures for enforcement have been geared up and put in place."

In response to Senator Simpson's question about how we can insure a greater degree of success than other countries have experienced with the legalization process, Mr. Fuchs said the English and Canadian programs were too complicated, and England was too lax in its immigration law enforcement; and the 3-month Australian program was too short, as was the Canadian program.

In response to a question about trends regarding alien use of public assistance, Mr. Fuchs said people who have been here longer tend to use it more than "people who have been here shorter," women tend to use it more than men, and Mexicans tend to use it less than other nationalities. He noted that there is some overlap among these groups.

Mr. Fuchs identified what he saw to be the major problems with the Administration's legalization program as: (1) it's "hard to communicate and articulate so that people will not come in"; (2) it's not sufficiently tied to an enforcement strategy; (3) if large numbers do come in, it will be the equivalent of a temporary worker program, with all its deficiencies; and (4) the 3-year renewable system creates a difficult administrative situation for INS.

In response to a question about the future implications of a large-scale legalization program, Mr. Fuchs said that if 1.5 million, or approximately 60 percent of the estimated number of illegal aliens in the country were legalized, then between 375,000 and 775,000 additional aliens would eventually be eligible to come in as the relatives of permanent resident aliens, under the second preference. He pointed out that they would take their place in line with the approximately 168,000 people currently in the second preference backlog. With regards to citizenship, another factor which will determine future flows stemming from a legalization program, he noted that the naturalization rate varied from country to country and was, for example, low for Mexico but high for the Philippines.

E. Panel

1. Paul Egan, Assistant Director, National Legislative Commission, American Legion;
2. Francisco Garza, Legislative Director, National Council of La Raza;
3. Michael G. Harpold, President, National Immigration and Naturalization Council, American Federation of Government Employees.

Statements

1. Paul Egan said that the American Legion believed "that amnesty or legalization is undesirable and we strongly oppose the idea as unworkable, impractical and unjustifiable for a variety of reasons." They opposed legalization, first, because "jobs held by illegals should and could be held by Americans," as documented by Mr. Egan in his testimony. They also believed that legalization "creates an injustice for those wishing to immigrate legally"; that it "would naively legitimize transgressions of U.S. law"; and that it "constitutes an unsupportable forfeiture of sovereign control over how generous we as a nation can afford to be."

2. Francisco Garza indicated that the National Council of La Raza is "overwhelmingly in favor of the legalization program" as a necessary component of a comprehensive immigration package, although they have serious problems with the specific legalization proposals of both the Reagan Administration and the Select Commission. He warned against deportation of those who would be ineligible, primarily because it would deter people from coming forward; he particularly objected to "the 10-year probationary period in the Administration's proposal," indicating that there was no incentive for the undocumented to come forward; and he urged that provision be made for the petitioning of immediate family members by participants in a legalization program.

3. Michael Harpold indicated that "the subject of amnesty is a painful one" for INS employees because it was an indication that the immigration system had broken down. He expressed reservations about "general amnesty" because of the unknown numbers involved, the qualifications of those who would be admitted for entry, the "credibility factor," and the administrative difficulties involved in dealing with potentially very large numbers. Turning specifically to the Administration's proposal, he expressed doubt that it would fulfill its stated goal because the restrictions placed on the "grant of amnesty are such that not many people would accept its conditions." He also said that "the administrative burden on the INS would be . . . phenomenal," in terms of initial registration and policing the 10-year residence period. He also expressed concern about the family reunification issue, noting that the legal separation of families leads to their illegal entry.

He proposed admission of the minor children and spouses of immigrants who are already here outside the numerical limits. He also proposed "a combination of Section 249, which is registry, and suspension of deportation to permit the continuing adjustment of people who are here for a 7-year period to remain in the United States."

Questions: Mr. Egan was asked about possible alternatives to legalization and he noted, although specifically did not endorse, the possibility of an amendment to the posse comitatus act, which would allow the military to assist in the enforcement of the immigration law.

Mr. Garza recommended "a contingency status" for those ineligible for legalization because of their entry after January 1, 1980. He described this as "some type of temporary resident status" which would allow them to work for a couple years, and eventually adjust to permanent resident status if that was their goal. He denied that this status would be similar to that proposed by the Administration's legalization program, in part because it wouldn't be for such a prolonged period of time. Mr. Garza also recommended increased airport and interior enforcement aimed at the approximately 50 percent of the undocumented population thought to be non-Mexican.

Mr. Garza said he believed that a significant number of the 380,000 backlogged Mexicans were, in fact, here illegally, and would be the beneficiaries of a legalization program which, in turn, would reduce the backlogs. Mr. Harpold estimated that 30 to 40 percent of the people resident in the United States in unlawful status would be eligible to emigrate were a visa number available, and stressed again the need for a realistic recognition that close family members will enter illegally if they are not allowed to enter legally.

In response to a question about his recommendation to advance the date of Section 249, the registry provision of the Immigration and Nationality Act, Mr. Harpold said the date, which is now June 30, 1948, had been periodically updated over the years, and had never fallen so far behind. He suggested the possibility of a date which would move forward as the years passed and "institutionalize a method for relief." He said that the relief available under the suspension of deportation provision with its 7-year residence requirement was available to fewer than 1,000 cases a year because of the very restrictive "exceptional hardship" requirement. Commenting specifically on the Administration's legalization proposal, Mr. Harpold said that the 3-year review requirement gave it "the character of a renewable term temporary worker program," with the purpose of determining whether the participants were employed. He also recommended that "continuous residence" mean "precisely no departures."

Mr. Harpold expressed reservations about the participation of voluntary organizations in a legalization program. Mr. Garza recommended it, noting that it would mitigate fears and maximize program effectiveness. He also expressed an interest in the concept of "user fees" as part of a legalization program.

F. Panel

1. Dr. John Tanton, Chairman of the Board, Federation for American Immigration Reform (FAIR);
2. Phyllis Eisen, Director of Public Policy, Zero Population Growth (ZPG);
3. Charles Keely, Center for Policy Studies, The Population Council, representing Citizens Committee for Immigration Reform.

Statements

1. John Tanton stated that FAIR had some unanswered questions about amnesty, including the tax status of "amnestied illegals" and their dependents, and whether they can qualify for affirmative action programs, and he urged caution. He recommended thinking of amnesty in terms of "a statute of limitations for offense against . . . immigration laws," and amending Section 249, the registry provision, to provide for "a rolling registration date." He recommended that the date be advanced from 1948 to 1970 and that it advance one year for each passing year for a 3-year period, at which point it would be reviewed by the Congress in the light of experience with illegal alien control, etc. He also suggested that the President could establish a clemency board or appoint pardon attorneys in the Department of Justice who could recommend additional pardon for hardship cases of illegal immigrants of more recent origin.

2. Phyllis Eisen indicated that ZPG was particularly interested in proposals relating to immigration, since legal and illegal immigration are estimated to account for 40 to 50 percent of our population growth. She criticized the Administration's legalization proposal as "a backdoor guest worker program" which would encourage more illegal immigration because of family separation, and described it as "punitive as well as unrealistic," and "unnecessarily complicated and therefore unworkable." She indicated ZPG's support for the implementation of a comprehensive immigration reform package which, in addition to controls, would provide for immediate adjustment to permanent resident status for those who met the eligibility criteria for legalization, with money available for data collection to aid in the control of future illegal flows.

3. Charles Keely noted that the idea of amnesty for undocumented aliens has widespread support; "the issues are the timing and the scope of a regularizing program." He indicated that the Citizens Committee for Immigration Reform concurred with the Select Commission in recommending a residency requirement of no more than 2 to 3 years. He said that two lessons to be learned from similar programs in other countries were the need for an appropriate time for registration, and the importance of the participation of agencies and organizations which are trusted by the immigrant communities. Commenting specifically on the Administration's proposal, Mr. Keely said the 10-year waiting period was too long, the burden on INS was too great, the amnesty proposal was a temporary worker program by another name, and the program was unrealistic in its apparent assumption that most eligible undocumented aliens are males and that families are willing to remain separated. He noted that in the Northeast, undocumented workers are not primarily from Mexico but from Caribbean and other parts of Latin America, and that female participation rates were high.

Questions: During the course of the questioning, it was noted that Dr. Tanton believed that enforcement was the best incentive for making a legalization program work. He indicated he had in mind the opposite of what took place during the 1980 Census, when INS was instructed to "avoid enforcement." He also indicated that an expanded H-2 program could be used to ease the transition from illegal labor, and that aliens who had entered illegally after the 1970 cutoff date he had recommended for legalization might be offered a position in such a program.

Ms. Eisen indicated general support for the legalization proposals of the Select Commission. She stressed the need for an effective, one-time program, and subsequently emphasized the importance of publicity in gaining the trust of the undocumented aliens whom she described as "very, very fearful." She also indicated opposition to any kind of a guest worker program. During the course of the questioning, Ms. Eisen and Mr. Keely commented on health and education costs in connection with both illegal aliens and amnesty.

In response to a question about the appropriate timing of a legalization program, Mr. Keely recommended the simultaneous implementation of the various components of a comprehensive package, including enforcement and legalization. In subsequent questioning, Mr. Keely said that the ethnic patterns of migration were changing, as they had changed in the past, and that he had no problem with that since he was sure the different ethnic groups would continue to integrate as they had in the past.

There was some discussion between Dr. Tanton and Mr. Keely about the comparative contributions of changes in fertility and migration to future population growth. Both agreed that Leon Bouvier's work had shown that change in fertility was the more significant factor, but Dr. Tanton argued that "immigration is the variable that can be effective," since there was little we could do about changing the fertility rate. Mr. Keely responded that, in fact, "we have things we can do and we do them," albeit indirectly, about influencing the fertility rate.

X. NOVEMBER 23, 1981, "THE PREFERENCE SYSTEM"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (chairman of the subcommittee) presiding.

Present: Senators Simpson (R., Wyo.) and Grassley (R., Iowa).

A. Opening statement of the subcommittee chairman

Senator Alan Simpson opened the hearing and explained that the Administration witnesses would not be present but that their written testimony would be incorporated in the record.

He said that the hearing would focus on which applicants should be given preference to enter the United States. He indicated that currently less than 5 percent of our new permanent residents have been admitted for individual qualities that promote the national interest. He said that he supports family reunification but that it should be based on the U.S. concept of nuclear family. He indicated that there is support for increasing the percentage of immigrants admitted for skills and trades likely to benefit the United States and suggested that some preference might be given to those with skills and traits that would increase their opportunity for success in this country, such as education and English language training, "as is done by other major immigrant-receiving countries." He also indicated that there is support for admitting those who intend to naturalize.

B. Written testimony of administration panel

1. Malcolm Lovell, Jr., Under Secretary, U.S. Department of Labor (DOL);
2. Hon. Diego C. Asencio, Assistant Secretary for Consular Affairs, DOS;
3. Alan C. Nelson, Deputy Commissioner, Immigration and Naturalization Service (INS).

1. Mr. Lovell described the current system used to grant labor certification to aliens coming to the United States for employment. He said labor certification has two basic functions: to protect the U.S. labor force and to allow for the entry of needed workers into the United States. He indicated that only about 5 percent of all legal immigrants and refugees are admitted as certified labor market participants. He suggested that rather than concentrating on individual employer recruitment efforts, 3rd and 6th preference visas should be allocated to aliens with the most needed skills. He said the Administration's bill would replace use of case-by-case determinations with use of national labor market information to determine occupations for which there are insufficient workers available in the U.S. labor force. He indicated that the Select Commission on Immigration and Refugee Policy had recommended against continuing the current labor certification procedure by stating "that the current system is 'time-consuming, costly, and aggravating to all concerned.' "

He described the factors they are considering in developing a methodology for producing a national list of pre-certified occupations, including in periods of high unemployment, unskilled jobs would generally not be certified; determinations regarding sufficiency of workers will be made only at the national level and not by region or locality; adverse effect would be determined in the aggregate rather than on a case-by-case basis and the Department would issue regulations specifying the methodology to be used to develop the list of occupations certified to have an insufficient supply of U.S. workers.

He said the DOL supports the current numerical restrictions and humanitarian goals of U.S. immigration and refugee policy and does not believe the 5th preference for brothers or sisters of U.S. citizens should be eliminated. He further said that the Administration does not support increasing the percentage of immigrants screened for labor market impact or using additional selection criteria for prospective immigrants seeking preference admission.

2. Mr. Asencio said that two fundamental aspects of legal immigration are numerical limitations and the manner of selecting imigrants. He said the Administration has proposed a single change in numerical limits and is not proposing to change immmigration selection criteria. The change proposed is the establishment of separate 40,000 each limitations on Canada and Mexico. The unused portion of either of the two 40,000 limitations would be available to natives of the other country. The numerical limitations for all other countries would be 230,000.

Mr. Asencio indicated that the President's proposal acknowledges the ties that exist between United States and contiguous nations and is also part of a plan to regain control of our borders.

3. Mr. Nelson outlined the historical development of the current numerical limitations and the preference system. He indicated that the Administration opposes any overall cap on immigrant and refugee admissions which might restrict entry of one group to accommodate another. The Administration, he said, is recommending increases in the present per-country ceiling on visas for Canada and Mexico to 40,000 each which would increase all numerically limited visas from 270,000 to 310,000 per year. He said the Administration is also recommending that the labor certification procedure be simplified by using an annual DOL list of occupations for which a sufficient number of U.S. workers are unavailable.

C. Individual testimony and questioning of E. M. Berger, Berger and Winston, Montreal, Canada

Mr. Berger discussed the point system used by the Canadian government for selecting independent immigrants. He explained that the Canadian system allows the application of principles without regard to the applicants' ethnic origin or geographic location; eliminates discrimination on grounds of "color, ethnic origin, nationality, race, religion, or sex"; and links immigration with labor force opportunities. He said that, currently, employment factors account for almost half the total possible points. He indicated that Canada's system allows the Minister of Employment and Immigration to react quickly in emergency situations to rapidly admit people. He said that the Canadian point system allows for more rapid processing than in the United States. He also said that some discretion is allowed in implementing the point system. According to Mr. Berger there will be approximately 140,000 immigrants (including refugees) admitted to Canada in 1981; 138,000 in 1982; and 145,000 in 1983.

Senator Simpson asked for the breakdown of admissions by family, skilled, and unskilled workers. Mr. Berger indicated that independent applicants would amount to 20-25,000 per year; refugees would be about 16,000 per year; there would be 10-12,000 entrepreneurs and investors; and the bulk of the remainder would be family class applicants.

In response to questions from Senator Simpson on the assimilation of immigrants in Canada, Mr. Berger said they have had no trouble. He pointed to the language requirements under the point system as a major reason for this.

Senator Simpson asked how they determine that there are not sufficient Canadian workers for a particular occupation and Mr. Berger indicated that the entire Canadian market can be canvassed by computer within 24 days. He said qualified Canadian candidates are flown at government expense for the job interview. If a candidate cannot be found, the labor certification would be approved.

D. Panel

1. Austin Fragomen, American Council on International personnel;
2. William F. Cagney, National Foreign trade Council;
3. George E. Ludlow, North American Placement Service.

Statements

1. Mr. Fragomen indicated that the Council believes the U.S. immigration system has become too heavily weighted in favor of family reunification and that the annual number of labor-certified workers is too small. He said they recommend increasing the allotments for third and sixth preference by 15-20 percent. He also recommended dividing sixth preference between skilled and unskilled workers and expanding the third preference to include key personnel of organizations. He indicated that they support streamlining labor certification procedures but question the Administration's proposal because it could lead to a situation where the DOL might "revert to their old system." He suggested other means of streamlining the system, such as asking companies to show evidence of recruitment rather than requiring them to follow the DOL's advertising concept. He also suggested that the law include preference for "foreign investors and persons retiring in the United States that are of substantial means."

2. Mr. Cagney indicated that the Council seeks reasonable consideration of the needs of American business. He said there is a need for a two-way flow of professional and managerial personnel between U.S. companies and their foreign branches or affiliates. He said that while American employees sent abroad encounter little delay from foreign governments, employees of U.S. companies coming to the United States "encounter excessive delays and undue restrictions." He indicated that they would like to see the third and sixth preference visa allocations raised from 27,000 to approximately 40,500. He said they would like the third preference category redefined to include key personnel of companies. He said they welcome revision of the labor certification process. He suggested that the Secretary of Labor be urged or required to consult with the private sector in determining needs and recommended job titles. He indicated their opposition to reducing the total number of visas for the preference categories from 270,000 to 230,000.

3. Mr. Ludlow said his firm specializes in finding skills that are unavailable on the domestic labor market. He said they investigated the labor certification program and found that it acts against the interest of those it was designed to serve. He said that according to Aaron Bodin, Chief of the Labor Certification Division, 80 percent of the people certified last year were already in the United States. He said that the Administration's proposal of publishing a list of skills that are in short supply would help, but that such a list must truly reflect skills in short supply and must allow for exceptions.

Questions: In response to questions from Senator Simpson, Mr. Ludlow indicated that employer groups should be allowed some input and that data from the Bureau of Labor Statistics should be used in developing regional lists of unavailable skills. He said such lists would eliminate the practice of tailoring job descriptions. He indicated that young, inexperienced people are more willing to come to the United States temporarily to work as nonimmigrants than are professionals with families. He said extending temporary worker visas from 1 to 3 years would be an improvement. Senator Grassley questioned Mr. Fragomen and Mr. Cagney on this topic and Mr. Fragomen indicated that time delays pose a major problem in transfers of needed specialist and professional personnel to the United States and that they thus often enter as nonimmigrants and then apply for permanent residence. Mr. Cagney said the National Foreign Trade Council did a survey which found most such people did leave the United States after about 3 years. Mr. Fragomen emphasized that the system "compels companies to bring people here on temporary visas even though they really intend to be here permanently." He indicated that increasing the numbers admitted on L or H-1 visas would not solve the problem. In response to questions from Senators Simpson and Grassley, Mr. Fragomen indicated that the DOL could develop definitions distinguishing between skilled and unskilled labor in the sixth preference group and could expand the third preference category to include "key personnel" of companies. He indicated that currently not all third preference numbers are utilized. Mr. Cagney emphasized that the DOL should take into account individual requests for labor certification rather than rejecting them simply because they're not on the list.

Senator Simpson asked what caused processing delays and Mr. Fragomen said the INS procedures are antiquated. He suggested that either their staffing and management be increased or they look for substantial compliance rather than line-by-line scrutiny of each application. He said the DOL has made what should be a simple system complex.

In response to questions from Senator Simpson Mr. Ludlow and Mr. Cagney discussed the shortage of certain types of engineers in the United States and the salary levels paid abroad. Mr. Ludlow said he believed American employers would not recruit professinals overseas if they could find a U.S. resident to fill the job because recruitment and moving costs are high. Mr. Fragomen said he believes the DOL need only determine that big companies are paying a proper salary and require them to document the recruitment efforts they made for the job. He said the problems exist at the lower end of the job scale and that the programs and policies have been designed to deal with this group of people. Mr. Ludlow described how illegal aliens enter the United States and manage to be sponsored for labor certification. He said most labor certifications are issued in this way.

E. Individual testimony and questioning of William J. Keeley, American Engineering Association

Mr. Keeley said foreign engineers are filling almost one out of four engineering openings in this country, many of them admitted under labor certification. He said foreign engineers are willing to work for lower wages and his association considers that harmful to the wages and working conditions of American engineers. He also said they oppose increasing the number admitted and an advanced blanket certification for engineers. He indicated that the contract engineering field is particularly harmed by foreign competition. He said importing engineers results in Americans being replaced and that the quality of engineering services is reduced when Americans are replaced by foreign-born engineers.

In response to questions from Senator Simpson, Mr. Keeley indicated that he believes there is a danger of harmful technology transfer when foreign workers return home. He indicated that savings in use of computer techniques would surpass use of a foreign engineer. He said that if job descriptions were let out to job shops which said they were fairly described and they could not fill the position, he would feel better about employers being allowed to employ a foreign engineer. He opposed the issuance of a list of labor shortage categories. He said they would recommend that a Ph. D. be the normal educational requirement for an H-1 visa; that employers offer at least time and a half pay for overtime to domestic workers employed by employers requiring aliens; and that the prevailing wage paid for "temporary immigrants" be determined by comparison with the wages of contract engineers rather than direct employees.

F. Panel

1. Arnoldo S. Torres, National Executive Director, League of United Latin American Citizens;
2. Esther G. Kee, Executive Director, U.S.-Asia Institute;
3. Reverend Joseph A. Cogo, C. S., National Executive Secretary, American Committee on Italian Migration.

Statements

1. Mr. Torres indicated he was representing the Mexican American Legal Defense and Educational Fund as well as the League. He said that one of the most pressing issues is dealing with the backlogs of people waiting for visas and urged the Committee to introduce remedial legislation to deal with the situation. He said the backlogs have resulted in those in lower preference categories immigrating before family members and that the long waits for family members are a stimulus for illegal immigration. He recommended that a reasonable time period for issuing visas for family members be established. He said they support the creation of a first category for family reunification as proposed by the Select Commission, but they would also include spouses or minor unmarried children of permanent resident aliens. He said out-of-wedlock children and parents of minor U.S. citizens should also be included in preference categories. He said they were concerned that an independent immigrant category could lead to a "brain drain" of underdeveloped and developing countries. He indicated that they support a 50,000 annual refugee category with flexibility to adjust the numbers without having them count against normal flows. He also indicated their support for a national annual quota of about a million rather than per-country ceilings. He said they support expanding the labor market assessments of labor supplied but feel this must be accompanied by "better analysis of whether shortages are caused by employer manipulations or labor market dynamics." He said they have serious reservations about the point system. He emphasized that the immigration system must be flexible and that there must be a mechanism for periodic and ongoing analysis of the numbers of people entering.

2. Ms. Kee indicated that the Institute feels the fifth preference should not be eliminated, that Asians consider brothers and sisters

to be an integral part of the nuclear family. She added that cutting short the unification of families by eliminating the 5th preference and instituting a point system "is an attack upon the interests of Pacific Asians in America. * * *" She said they recommend increasing the proportion of visas available for labor markets. She said that, except for clearing the backlog of labor certification visas pending, they support the existing labor certification process. She added that they would like Schedule A, the DOL blanket classification for occupations in short supply, to be expanded. She said they oppose the point system because it favors the wealthy and priviledged.

3. Mr. Cogo indicated the Committee's support for the current principles underlying the immigration law—family reunification, the good of the economy, and alleviation of refugee problems. He said no one principle should be sacrificed for the others. He indicated they would like the law structured so that preferences and quotas are separately available for each of the three principles. He recommended that the fifth preference not be eliminated or redefined. He said the concept of family reunion for many ethnic groups in the United States includes brothers and sisters. He cited further reasons for keeping the category, including that this group of immigrants is easiest to resettle and have practically no need for public assistance. He said they would like to see a separate quota for those who can "contribute to the good of our economy" and that it should include the present third and sixth preferences and "investors." He suggested the visa allocations be based on long-range economic forecasts but be flexible so that they can be adjusted if need be. He said that labor certification should be simplified and should be established regionally. He indicated they generally oppose using a point system.

Questions: In response to questions from Senator Simpson, Ms. Kee said that extended Asian families have a positive impact on the United States, including contributing to the economy. She said that the positive effect of Asian communities does not come out in national facts and figures. Reverend Cogo, in response to questions from Senator Simpson, indicated that he believes Americans support the extended family concept. He said that giving access to independents at the expense of relatives was opening the door "to people who have no reason for being here." He said limited family reunification numbers should not include immediate family members who now enter outside the numerical limitation. He said the Italian backlogs reflect high dropout rates. Mr. Torres said that encouraging talented and skilled people to come to the United States risks the loss of the best people from underdeveloped countries.

In response to further questions from Senator Simpson, Mr. Torres indicated that he believes it is reasonable to have some backlog of applicants, but that it should be a matter of policy to inform them they will have a 1- or 2-year waiting period. Senator Simpson questioned whether eliminating backlogs retroactively increases the numerical limits to equal the demand. Mr. Torres said that although increasing the numerical ceilings would help reduce backlogs, other factors would also affect the flow of people wishing to enter the United States. Senator Simpson indicated that Mr. Torres' figure of a million as a numerical limit might not be unreasonable if other entries, such as illegal entries, were controlled. In response to further questions from Senator Simpson, Mr. Torres indicated that he believes there are significant Mexican and Latin American backlogs in the second preference.

G. Scholars panel

1. Barry R. Chiswick, Research Professor, Department of Economics and Survey Research Laboratory, University of Illinois at Chicago Circle;
2. Mark R. Killingsworth, Department of Economics, Rutgers—the State University and National Opinion Research Center;
3. Mark Rosenzweig, University of Minnesota.

Statements

Mr. Chiswick said the current immigration system emphasizes kinship ties with little concern for the economic impact of immigration. He said that 50–60 percent of the visas reserved for occupational preferences go to families of the occupational entries. He indicated that this means "less than 5 percent of all immigrants coming into the United States in a year are in any way skill-tested." He said the labor certification system is weighted in favor of those currently working, legally or illegally, in the United States and that the system is not effective in picking up the most productive people. However, he indicated that studies have shown that the people who enter under occupational preferences tend to do better in the labor market. He said lower-skill immigrants tend to negatively affect unskilled native workers while skilled immigrants tend to positively affect low-skill immigrants. He said to increase economic growth and reduce the size of income transfers in GNP, the immigration policy should be a skill based rationing system, allocating points for such things as schooling, vocational training, etc. He said close family ties could be included in the point system but should not be the overwhelming characteristic, although immediate relatives should be allowed to enter outside this system. He said he didn't think this system would be "anti-family."

2. Mr. Killingsworth said that noneconomic factors affect immigration; that economists lack firm evidence on a variety of points such as how immigrants fare once they enter the United States; and that economists sometimes have something firm to offer when asked rather technical questions and are given a policy target. He suggested in the latter vein that, as a possible alternative to the current labor certification program, we rely more on retrospective evaluation. He said that, in principle, it would be possible to make a determination as to whether having alien workers has resulted in lower employment or wages for Americans.

3. Mr. Rosenzweig said the fifth preference acts as a multiplier and that this contributes to the backlog of applicants. He said that those who are willing to stay in line the longest are admitted to the United States and that it is unclear whether they are "the select among the potential immigrants" that the United States might get. He described a study done by the Select Commission and INS of the 1971 cohort of Eastern Hemisphere immigrants, which found that 84 percent of non-fifth preference immigrants had naturalized or were filing I–53s and 45 percent of fifth preference immi-

grants were so categorized. In addition, 51 percent of the non-fifth preference had naturalized, while 16 percent of the fifth preference had. These figures, he indicated, might reflect whether people in these preference categories are fulfilling the goals of immigration.

He addressed the possibility of requiring English language skills as an entry criterion by describing results of an examination of the 1976 survey of income and education which found that 25 percent of the foreign-born who had been in the United States an average of 15 years could not speak, write, or understand English. They found no significant relationship between English language disability and low earnings among males and a small relationship among females. He felt this suggested that the U.S. economy can accommodate lack of English language skills.

He indicated that the evidence on how age at entry correlates with success is unclear.

Questions: In response to questions from Senator Simpson regarding why those from less developed countries earn less in the United States, Mr. Chiswick indicated that while those from high income countries might be willing to immigrate only if they earn high incomes here, those from low-income countries might be willing to work for less if it's more than they could make in their home countries.

Senator Simpson asked Mr. Chiswick's views on the immediate-relative category and Mr. Chiswick indicated that mushrooming similar to that in fifth preference occurs and that it should be limited to spouses, minor children, and aged parents. He said these people migrate voluntarily and that "family breakup is not a consequence of U.S. policy." In response to additional questions from Senator Simpson, Mr. Chiswick said the Office of Labor Certification in DOL has indicated they do not have studies which show why some categories are deleted from or added to the list of favored occupations. He said he favored using broadly defined skills so that any one occupation does not have an incentive to lobby to remove that occupation from the list.

Senator Simpson asked Professor Killingsworth about predictions that have been made that the United States will be short of unskilled labor by the end of the 1980s and Mr. Killingsworth indicated that trying to forecast the future is difficult. He said that what such a reduction might "portend for immigration policy" is unclear. He indicated that he is less concerned about changes in the numbers than changes in quality. In response to further questions from Senator Simpson relating to the effect of low-skilled immigrants, income inequality, and income transfers, he said that we don't have much empirical information in the area. Senator Simpson asked what effect importing labor might have on native wages and Mr. Killingsworth replied that importation of a particular skill group would make "the wages and possibly the employment levels of American workers in the same skill category lower than it otherwise would have been." He said there is contradictory evidence on how more unskilled workers would affect skilled workers and how more skilled workers would affect the unskilled. Mr. Chiswick indicated that imposition of studies of aggregate economy on "what happens if you have an increase in labor of a given category from immigration, * * * imply that the wages of the other skill group would in fact go up."

In response to questions from Senator Simpson, Mr. Rosenzweig said that requiring English language competencies of entering immigrants might be appropriate for non-economic reasons.

XI. NOVEMBER 30, 1981, HEARING ON THE "H-2 PROGRAM AND NONIMIGRANTS"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (Chairman of the Subcommittee), presiding.

Present: Senator Simpson.

A. Opening statement by Senator Simpson

Senator Simpson said that the hearing would focus on certain nonimmigrant classes, specifically H-2 temporary workers and foreign students; the reciprocal visa waiver proposal; and INS's system of nonimmigrant document control. He noted the connection between the three areas: unless INS has adequate control, expanding the H-2 program, easing restrictions on foreign students, and waiving the visa requirement for nationals of about 30 countries may only aggravate illegal immigration. He stated that such control had been rather conspicuously lacking in the past, with the result that nearly 50 percent of resident illegal immigrants may be visa abusers.

B. Administration panel

1. Malcolm Lovell, Under Secretary, Department of Labor;
2. Alan Nelson, Deputy Commissioner, Immigration and Naturalization Services, Department of Justice;
3. A. James Barnes, General Counsel, Department of Agriculture.

Statements

1. Malcolm Lovell outlined the Department of Labor's role in the nonimmigrant H-2 temporary worker program. The Immigration and Nationality Act (INA) directs the Attorney General to consult with appropriate agencies on the importation of nonimmigrant H-2 workers, who may be admitted for temporary employment under section 101(a)(15)(H)(ii) "if unemployed persons capable of performing such services or labor cannot be found in this country." The Department of Labor has been designated by regulation to issue advisory opinions, known as labor certification, on the availability of U.S. labor and on whether the admissions of alien workers will adversely affect the wages and working conditions of U.S. workers similarly employed.

The Department of Labor has issued separate regulations concerning labor certification for H-2 agricultural and non-agricultural workers. The regulations for non-agricultural workers are less structured since the occupations covered range "from entertainers to aerospace engineers." The agricultural regulations are quite detailed. Employers who anticipate a shortage of agricultural workers are required to file a job order and an application for certification

80 days prior to the date of need with the nearest State employment service office. After 60 days of extensive recruitment efforts by the employer and the State employment service through the local and interstate recruitment system, a determination on the availability of domestic agricultural workers is made by the Department of Labor. If U.S. workers are not available and those similarly employed would not be adversely affected, the Labor Department issues certification for temporary alien employment. An expedited administrative review by a Labor Department hearing officer may be requested by an employer denied certification for agricultural workers. Recruitment of the alien workers is done by the employers.

Jamaica is currently the major supply country for H-2 workers in agriculture. About 8,700 Jamaicans and British West Indians are employed annually in Florida sugar cane, and 5,000 to 6,000 work in the East Coast apple harvest. About 1,000 Mexicans work in the Virginia tobacco harvest: about 1,000 total from Mexico, Spain, and Peru work as sheepherders in the West; and about 1,000 Canadians are employed in the New England woods industry annually. A total of 18,371 farm workers were certified in 1980; nearly 25,000 non-agricultural workers were certified, more than half of them in entertainment, engineering, sports, and construction.

Mr. Lovell said that although small, the H-2 program is controversial because it "mandates the balancing of conflicting goals of assuring employers of short-term workers of an adequate labor force on the one hand and protecting the jobs of citizens on the other." He said the Department of Labor had been involved in attempts to streamline and strengthen H-2 procedures, and noted the recently established inter-agency working group with the Departments of Justice and Agriculture.

2. Alan Nelson said that the basic difference between the existing H-2 program and the proposed temporary worker program was that in the latter, State governors would play a key role and workers would have greater freedom to change jobs. He said the Administration did not intend to propose specific changes in the H-2 program, but favored having two paths and testing the experimental program. He also said that H-2 overstays had not been a problem.

3. James Barnes said that the primary interest of the Department of Agriculture in the immigration control program was to assure that its implementation did not have a serious disruptive effect on agriculture. They believe the potential for such disruption exists because of the significant number of aliens currently employed in agriculture on a seasonal basis. He indicated that the H-2 program was particularly well-suited to meeting the labor demands of agriculture, and expressed uncertainty about whether the proposed legalization and temporary worker programs would meet agriculture's needs.

Questions: In response to a question regarding whether the adverse effect wage rate should be modified, Mr. Lovell replied that it would have to be because the data from the Department of Agriculture Farm Labor Survey used to calculate it would no longer be available. Senator Simpson asked why the adverse effect wage rate was required in agriculture, while non-agricultural employers of H-2s were simply required to use the prevailing wage rate. Mr.

Lovell replied that their studies indicated that H-2 agricultural workers employed on a regular basis had a depressing effect on wages, but non-agricultural workers did not.

Senator Simpson questioned Mr. Nelson on the discrepancy between the 43,000 certifications and 30,000 entries of H-2 workers in 1980. Mr. Nelson replied that there could be multiple engagements, where the same person was certified for more than one job. He also indicated that the problem of overstays was generally limited to Guam.

Mr. Barnes said that they estimated that between 300,000 and 500,000 illegal aliens were currently employed on a seasonal basis in agriculture, and that there was potential for a shortfall. He said that they saw the H-2 program "as a critical kind of safety valve to address whatever shortfall might develop." Senator Simpson asked him whether he would prefer the proposed temporary worker program or a streamlined H-2 program, for meeting a shortfall in the domestic supply of agricultural labor. Mr. Barnes replied that the H-2 program was better for agriculture's needs, in part because it provided "specific workers for a specific time period to fill a specific job." Mr. Nelson subsequently indicated that the Administration did not feel that there ought to be "an either-or choice" between the two program, but that they needed both. He noted that very few Mexicans have come in under the H-2 program and suggested that it might be overregulated, as compared to the minimally regulated experimental program which was geared to Mexico only. It was also suggested that the legalization program was a third way of meeting the shortfall.

Senator Simpson questioned Mr. Barnes about the need for importing temporary foreign labor given the high national unemployment rate, and questioned also whether there were economic benefits derived from H-2 as opposed to domestic agricultural workers. Mr. Barnes replied, first, that he believed the H-2s were filling short-term seasonal jobs that involved different skills than those of many of our domestic unemployed, and that an adequate test was made of their availability. Second, he said "that the experience of the agricultural producers is that in fact the H-2 workers cost the employer more than domestic workers do."

Mr. Lovell said that the Administration favored requiring employers participating in the new temporary worker program to pay social security and unemployment compensation taxes, but they did not favor requiring them of H-2 employers because of the expenses already involved for transportation, housing, food, and the higher adverse effect wage rate. With regards to streamlining the H-2 program, Senator Simpson asked Mr. Lovell what he thought about limiting precertification domestic recruiting for agriculture to the area of intended employment. Mr. Lovell replied that local recruiting had to be balanced against reaching the migrant stream, that people who made up the domestic workforce may not live in the local area. Mr. Lovell also indicated that he believed the current 80-day recruitment period, allowing 60 days for domestic recruitment, required under Labor Department regulations was sufficient, and that to increase it would make it hard for the employers to forecast their manpower needs because they wouldn't know what the state of their crops would be.

Mr. Nelson indicated he did not believe the Administration would favor involving the Government in foreign recruitment, but would prefer to leave that to the private sector. In response to a question about the desirability of transferring the labor market test for agricultural workers to the Department of Agriculture, Mr. Nelson indicated that the Departments of Justice, Labor, and Agriculture had an effective joint working relationship, and he was unenthusiastic about a jurisdictional switch.

C. Employers panel

1. Ashton Hart, President, National Council of Agricultural Employers;
2. George Sorn, Assistant General Manager, Florida Fruit and Vegetable Association;
3. John Etchepare, President, Western Range Association;
4. Russell Williams, President, Agricultural Producers;
5. Kenneth Rolston, President, American Pulpwood Association.

1. Ashton Hart itemized the National Council of Agricultural Employers' (NCAE) recommendations for improving the H-2 program, including limiting the recruitment requirement to the time and place of need, reducing the number of days the job order is in the employment service system to 30, abolishing the adverse effect wage rate, reducing the requirements for free housing and a ceiling on board charge, simplifying the paperwork, making agricultural employer associations fully eligible for certification for their members, and extending the period of certification under certain circumstances. He also indicated NCAE's concern about certain aspects of the Administration bill, including that many seasonal agricultural workers would not be eligible for amnesty and many who were would leave agriculture. They were also concerned that employer sanctions would increase the need for a responsive H-2 program, and that the 50,000 temporary worker program would not be adequate to meet agriculture's needs. He urged the continuation and expansion of the H-2 program, which he said was vital to agriculture.

2. George Sorn said the Florida Fruit and Vegetable Association (FFVA) had been involved with the H-2 program since 1947, in the past in citrus and vegetables, but since 1971 only in cutting sugar cane. He said the continuation of the H-2 program was imperative to fill seasonal shortages, and also to protect related domestic jobs. They believed the Labor Department's position since the early 1960s has been to eliminate the use of H-2 workers, and suggested that the Congress and Executive Branch might direct that the use of legal H-2 workers was preferable to the use of illegal labor. He also argued that the H-2 workers had not had a detrimental effect on the wages of U.S. farm workers in Florida. The State has both the highest number of H-2 agricultural workers, and the highest percentage increase in average hourly farm wage rates between 1969 and 1977 of any State in the nation. He agreed that H-2 workers should not be cheaper than U.S. workers, and asserted that in fact they were much more expensive. He also recommended strengthening the Farm Labor Placement System of the Department of Labor's Employment Service.

3. John Etchepare said the Western Range Association favored term certification for sheepherders, as opposed to the present requirement that they be recertified every 11 months for a maximum 3-year stay. He said they have a standing open job offer, and the Department of Labor would lose no control over them. They also have a signed agreement with INS regarding the departure of alien sheepherders, and that over 30 years probably less than one-half of one percent have not returned. He also requested blanket certification for the sheepherder program, which would allow them to bring in a number of aliens under one certification. His final recommendation was "certification in accordance with the statute" and Congressional control.

4. Russell Williams said that Agricultural Producers represents about 80 percent of the citrus and avocado industries of California and Arizona. He said they generally believed the existing statutory scheme for the administration of the H-2 program was sound and should continue, that certification should remain with the Department of Labor rather than with State governors or another Federal agency, and that the Administration's proposed 50,000 temporary worker program would not meet their needs. He noted that the Department of Labor's regulations imposed more obligations for agricultural than for non-agricultural employers. He recommended amending the law to require U.S. workers to be available at the time and place of need, and making regulatory changes to reduce the number of days the job offer must be in the employment system, modifying the requirement for housing and board, discontinuing the adverse effect wage rate, and allowing an association to seek certification on behalf of its members. He ended by recommending that both the H-2 program with its controversial guarantees and obligations, and the freer temporary worker program proposed by the Administration should be available to both employers and workers.

5. Kenneth Rolston said he was there on behalf of some independent logging contractors in the northern part of Maine who still required some Canadian workers. He said this need arose because in Maine the forests are in the north, and the people are in the south. Some of the Canadian woodsmen live closer than do U.S. citizens. In addition to problems of camps and commuting, he said that the work, while highly paid, was arduous. He said his industry was committed to reducing dependence on Canadian woods workers, and the numbers had fallen from 3,400 bonded workers in 1959, to 1,600 in 1972, and 520 in the current season, 1981-82, certified to 23 logging contractors. Less than 2 percent of the 1,700 logging operations employ bonded workers. He estimated there were probably 1,000 to 2,000 "visa Canadian woodsmen."

Questions: Senator Simpson expressed concern at the prospect of having "a permanent—if a rotating but a permanent—class of foreign workers in agriculture doing jobs which U.S. workers will not do," primarily because of low prevailing wage rates. Mr. Hart said he believed there were certain jobs U.S. workers did not want to do, and not just in agriculture.

Mr. Sorn said he believed H-2 employers should be required to follow prevailing practices regarding such things as transportation, but agreed with the theory that it should not be cheaper to hire H-

2 workers. He also said Florida agriculture did not begin using illegal workers "until the squeeze was put on us in the H-2 program," beginning in 1965.

Mr. Etchepare discussed the need for 5-year term certification of sheepherders, noting they were skilled workers who needed training, and they were coming here to save money to buy a farm back home. He said that 4- to 5-year periods fit both the employers' and workers' needs better than the current 3-year period. He said that years ago it was originally a 4-year program—a 3-year certification, with an almost automatic one-year extension. He indicated that they had about 1,000 H-2s in the country at any one time, with a turnover of about 300 a year. While he favored having both the H-2 program and the proposed guest worker program, he did not think sheepherding would see any benefits from the latter. He also thought there had been a steady increase in the number of illegals in livestock ranching over the last 5 to 10 years.

Mr. Williams estimated roughly that California alone would need 200,000 temporary workers to replace undocumented aliens, and that the 50,000 figure proposed by the Administration "would not do it." Neither he nor Mr. Etchepare favored certification at the State level. Mr. Williams favored a phase-in transitional period while the social security card is developed as a means of identification in connection with employer sanctions, and indicated the Reagan Administration's proposals were "perhaps adequate during an interim period."

Mr. Rolston said that he did not know, but he believed that the number of domestic woods workers had been increasing as the number of H-2s went down, because the production rate had been increasing dramatically during the same period of time.

D. Legal advocates panel

1. Steven Karalekas, Attorney, Charles, Karalekas, Bacas & McCahill;
2. Margaret McCain, Farmworker Unit, Pine Tree Legal Assistance, Inc.;
3. Rob Williams, Florida Rural Legal Services, Inc.;
4. Michael Semler, Executive Director, Migrant Legal Action, Inc.

1. Steven Karalekas said he was testifying on the H-2 program as viewed from a law office as opposed to a farm. He observed that the program should be continued because there is a labor shortage in American agriculture today, that it was a necessary and practical alternative to illegal aliens, and that it must be streamlined and expanded. He said a farmer cannot use the program by himself, without the assistance of a lawyer because of its complexity combined with Labor Department hostility. He made three recommendations for improving the H-2 program: (1) reduce the paperwork to one document filed by the employer; (2) reduce the domestic recruitment period from 60 to 30 days; (3) treat H-2 workers like everybody else regarding wages, working conditions, and benefits.

2. Margaret McCain testified on behalf of clients in the Maine logging business who claimed job displacement by H-2 workers. She said employers preferred H-2 workers because it was the "eco-

nomically rational choice." She said the Canadians could afford to work for less money because they were governed by a different economy, that it was "a border problem" rather than a problem of availability. She offered a number of suggestions to the question of how user industries could be weaned from their dependency on "the imported labor subsidy," including restricting H-2 workers' use to short-term agricultural employment, requiring U.S. employers to hire at least two U.S. workers for each H-2 worker, and requiring petitioning employers to pay a nonrefundable imported labor recruitment fee.

3. Rob Williams, an attorney with the Florida Rural Legal Services, argued that the history of the sugar cane industry in Florida shows that the rights of H-2 workers cannot be protected, in large part because they cannot change employers, and he did not view the program as a valid alternative to illegal immigration. He said the regulations intended to protect both H-2 and domestic workers were disregarded in practice. Quoting, "If our concern is for the worker both foreign and domestic, the H-2 program should be eliminated, not expanded."

4. Michael Semler, an attorney with the Migrant Legal Action Program, said that they believed the use of H-2 workers in agriculture should be terminated. Alternatively, major revision is required. He suggested that a major reason that employers seek H-2 workers is because they are not required to pay Social Security or unemployment insurance taxes, and that this resulted in savings which exceeded the costs associated with the H-2 program, at least for apple producers using H-2s in the Hudson Valley. He recommended that the H-2 exemption be eliminated from both the Social Security and unemployment tax provisions; that there should be Federal control of recruitment and hiring of foreign workers under formal bilateral agreements, with the H-2 workers paying the cost; that the Labor Department should retain and improve the adverse effect wage rate; and that the regulations should be revised to require domestic recruitment to begin earlier, with job orders submitted at least 6 months in advance of need so that domestic migrants can be reached.

Questions: In response to questioning by Senator Simpson about the domestic recruitment requirement, Mr. Karalekas noted that permanent labor certification only requires a test of the local labor market, as opposed to H-2 labor certification which requires a nationwide test. He said that limiting the employer's responsibility to local recruitment would not bar workers from anywhere in the country from taking the jobs. In a related discussion, Ms. McCain said that the present 80-day recruitment period required for H-2 certification actually amounted to about 20 days for domestic recruitment, and that a period of 30 days for actual U.S. recruiting was needed. Mr. Semler also commented on the need for a sufficient recruitment period to reach domestic migrant workers. Mr. Williams suggested that workers be allowed to pre-register for jobs, so they could be notified if and when they became available. He also recommended improvement of the Employment Service's recruiting operations.

Senator Simpson questioned Mr. Karalekas on whether growers preferred H-2 workers; he replied that all their H-2 employers also employed U.S. workers, and would prefer to hire local U.S. workers. He said they were becoming less available, and the two remaining options were H-2 workers and illegal aliens.

Mr. Semler said he was comfortable with an estimate of 250,000 U.S. migrant workers, accompanied by 750,000 family members. He believed the number had declined, as Senator Simpson noted, but that the number of jobs was declining, too, and that adequate numbers of domestic workers could be found given the better wages and working conditions U.S. employers would have to offer if foreign workers were unavailable. Ms. McCain indicated that in the woods industry, the declining number of H-2 workers was not accompanied by a proportionate increase in U.S. workers, and that H-2s were being replaced by Canadians with commuter visas. She also indicated a willingness on the part of her clients to accept jobs in northern Maine.

Senator Simpson asked Mr. Semler what he recommended to ensure that the H-2 program does not become self-perpetuating in certain sectors of the economy. Mr. Semler noted that this was indeed the case among certain growers in apples, tobacco, and sugar cane. He suggested paying higher piece rates, earlier recruitment, more flexibility including partial recruitment, and less paperwork. Mr. Karalekas said he thought the nonagricultural H-2 program worked considerably better than the agricultural one because it was not subject to the "massive complex of regulations" that apply only to agriculture, and it wasn't as "time-critical."

Three of the witnesses commented on the problems of timeliness under the agricultural program. Mr. Williams indicated that judges were pressured to certify by imminent harvest seasons, and Mr. Semler noted problems arising from the absence of administrative records due to the timing of the recruitment and certification process. Mr. Karalekas said that virtually no grower groups had been able to enter the H-2 program without suing first, and that simplifying the program would decrease the litigation now associated with it.

E. Labor panel

1. Stephanie Bower, United Farmworkers;
2. Richard Gowen, Vice President, Institute of Electrical and Electronics Engineers;
3. Jesus Romo, Director, Farmworker Rights Organization.

1. Stephanie Bower said that according to Caesar Chavez, the President of the United Farmworkers, AFL-CIO, any temporary worker program, including the existing H-2 program, delays and defeats organizing attempts and thereby harms all agricultural workers. She gave examples of specific incidents where H-2 workers were hired in preference to domestic workers, including in Presidio, Texas. She said that U.S. agribusiness was resisting the attempts of farm workers to secure various rights and benefits, and also noted rising unemployment, particularly among minority youth. She recommended a Federal incentive program to recruit domestic workers nationwide at prevailing wages. She also recommended "streamlining" the H-2 program along lines previously suggested: remove economic incentives to employers, require them

to pay FICA and unemployment insurance, maintain certification by DOL, and cooperate to end industry dependence on H–2s.

2. Richard Gowen, the Vice President of "the world's largest technical, professional engineering society," expressed concern about "the perhaps unnecessary and improper use of the H–2 category" to bring in foreign engineers at lower salaries than those paid U.S. engineers. He favored individual certification for both H–2 and permanent entries, and opposed the use of national labor market data for the latter, as proposed by the Administration on the grounds that "certification for specific job opportunities minimizes errors in labor market determinations." He also opposed State certification "without reference to the national manpower supply."

3. Jesus Romo said that the Farmworker Rights Organization and the United Farmworkers Union, which he was representing, opposed both the H–2 program and the guest worker program proposed by President Reagan, and regarded them as subsidies for U.S. agribusiness at the expense of the country's farmworkers. He argued that agribusiness prefers legal temporary foreign workers to domestic workers because they are cheaper, and documented this with reference to the Florida sugar cane industry. He said the H–2 program was a "grower's solution," an attempt to prevent change and to use U.S. Government intervention to regulate the labor supply as opposed to competing "in an organized free labor market."

Questions: In response to questioning by Senator Simpson, Ms. Bower agreed that the number of domestic farmworkers had declined, but noted that the number of jobs had also declined, and argued that there was an adequate supply of domestic workers, particularly if the Labor Department allocated more resources to finding them. She said that wages would determine whether rural minority youth went into agriculture, and that there was no problem getting workers where they had union hiring halls. Mr. Gowen argued that there was not a blanket shortage of engineers, and that H–2 workers, foreign students, and immigrants were taking jobs that could and should be filled by domestic engineers. He suggested that engineering organizations could provide the Labor Department with specific information on salaries that would provide better protection of domestic workers than prevailing wage rates. Mr. Romo reiterated his position that "any kind of temporary worker program would have an adverse effect on farmworkers of this nation." He suggested that, in general, the H–2 program created a subclass, and where there was a real labor shortage, as with sheepherders, the workers should be brought in as immigrants. He also charged that H–2 regulations were inadequately enforced by the Labor Department, and that the growers took advantage of the cooperation they got from the Labor Department.

F. Hon. William Clements, Governor of the State of Texas

Governor Clements said the United States can no longer condone the exploitation of illegal aliens, and noted the attention given to the problem during the U.S.-Mexico Border Governors Conference in June 1980 and October 1981. He said the Reagan Administration's proposed legislation was a correct and vital first step, and described the guest worker provisions as the keystone, although 50,000 was perhaps too low. He said Mexican workers make an important contribution to the U.S. economy, and augment rather than displace the U.S. work force.

The Governor said that estimates of the number of Mexican workers in Texas range from one half to 3 million. He has appointed a task force to collect more accurate statistical information, and its findings will be used to determine Texas' guest worker requirements. He also suggested that the Administration's proposal should be amended to require a list of occupational vacancies, rather than jobs filled, to coincide with existing programs of State employment commissions.

Governor Clements recommended continuation of the H-2 program to allow for seasonal employment needs, and transferral of its administration from the Department of Labor to the Department of Agriculture. He also said that employer sanctions were essential, and that he had recommended a $1,000 civil penalty per illegal alien employed, which would be used to defray the cost of returning the illegal worker to Mexico. He stressed the importance of involving Mexico fully in any immigration program, from initial consultations to allowing them to monitor the whereabouts of guest workers in the United States.

Questions: Governor Clements estimated very roughly that one-third of the illegal aliens in Texas were in agriculture. He thought most were in construction, and that they were also present in the service industries. He and Senator Simpson agreed that there had been a shift away from agriculture. At a subsequent point, he indicated that the greatest number of undocumented Mexican workers was thought to be in the fastest growing metropolitan areas, such as Houston, the Dallas-Fort Worth area, and San Antonio. He said unemployment in these areas was very low, primarily due to construction, and that he doubted that there was much competition between the undocumented workers and the minority groups, as the Senator had suggested. Governor Clements said better information would be available from the task force report, although not until April.

In response to another question, he said he was not sure Mexico would want a bilateral agreement in connection with a guest worker program, but we should welcome their participation if they did. He stressed again the importance of keeping Mexico informed and recognizing our mutuality of interests.

G. Hon. John Warner, U.S. Senator from the State of Virginia

Senator Warner testified in favor of his bill, S. 1076, which would exempt nonimmigrant aliens entering for the purposes of performing agricultural labor from certain provisions of the Immigration and Nationality Act. He said the effect of the bill would be to repeal Federal regulations setting adverse effect wage rates which require U.S. farmers to pay temporary foreign workers higher wages than domestic workers. He said the methodology used to derive the adverse effect wage rate was first devised in 1968, and that it sets an artificial wage rate for the users of temporary foreign workers, who are also required to pay this same wage to any domestic workers they may hire. He noted that this puts the farmers who cannot find adequate domestic labor in a no-win situation, and is also driving up food prices in the supermarket. Senator Warner observed that employers of other temporary or permanent workers are required to pay only the prevailing wage.

In response to questions by Senator Simpson, Senator Warner indicated that H-2 agricultural workers in Virginia were engaged mostly in apple picking, and also in harvesting tobacco.

H. Philip Martin, associate professor of agricultural economics, University of California at Davis

Philip Martin said that his principal point was that agriculture was at a crossroads today, and the central question of the 1980s was what role alien labor was going to play in agriculture. He stressed the heterogeneity of American agriculture, noting that there are many agricultures and most have no farm labor problem. Legal and illegal alien workers are concentrated in the seasonal harvesting of some fruits and vegetables. He said that there was an alternative to alien labor, and cited the improved labor management systems which offered better jobs to fewer domestic and legally present workers. Quoting, "The policy questions facing the Congress are whether to end dependence on alien labor in agriculture and how to phase out or improve the administration of the temporary worker programs that remain."

Following a review of data on farm employment, Mr. Martin said that the major farm labor problem was the need for a large number of short-term workers. An adequate domestic work force to meet this need is not necessarily available because "society has come to the conclusion that a farm workforce of such dimensions * * * cannot earn incomes that meet or exceed minimal standards. The American dilemma is whether and how to assure farmers enough labor to produce crops cheaply and to enable farm workers to earn incomes high enough to satisfy minimal living standards." Making legal and illegal workers available allows growers to expand production to a point where it cannot be handled by domestic workers at adequate prevailing wages, and is thus a kind of vicious circle. Mr. Martin said that "the H-2 program is a labor recruitment system that guarantees qualified harvesters to apple growers," for instance, and as such is a form of subsidy to the employers: without the alien workers, the growers would have to pay more to continue growing the same amount the crops. He noted that it was very hard to terminate alien worker programs after aliens became the main source of labor.

Mr. Martin concluded that the long-run cost of a large-scale alien labor program outweighs the short-run benefits, and recommended that the H-2 program be modified to admit limited numbers of aliens on a crop and area basis. He said the problem still remained of how to make the program transitional.

Questions: Senator Simpson observed that Mr. Martin stated alien labor was a substitute for an effective employment service to match employers to jobs, and asked him if he had any recommendation for improving the effectiveness of the Employment Service in recruiting U.S. workers. Mr. Martin replied that the main problem appears to stem from Judge Ritchie's court order in 1973, a consent decree signed by the Labor Department, which requires the

Employment Service to tell farm workers about non-farm opportunities. As a result, both farmers and farm workers are suspicious of the Employment Service. He recommended first, that it had to be recognized that "the employment service is not going to produce the same quality of workers as an alien labor program." Second, he suggested separating the employment and training service from the matching service, to reduce suspicions by farmers that the Employment Service will take away the workers.

In response to a question about the subsidy effect of the H-2 program, Mr. Martin said the main policy question is whether agriculture should be treated differently from, for instance, General Motors which would not be supplied with foreign workers if it located a plant in the wrong place. He noted that land, unlike capital, is not mobile, "but it does have alternative uses," and farmers do not have to grow apples in remote areas. He said the main problem in agriculture "is to figure out how to target subsidies," and recommended retention of a streamlined H-2 program—"keep it small and selective, as opposed to large and general." He suggested a continuation of the program for woods and sheep, noting that they were small programs that may actually terminate, as will sugar when wages get high enough so they will mechanize as an alternative.

Senator Simpson asked Mr. Martin how he would design a transitional guest worker program which would eventually be self-terminating. Mr. Martin recommended tying it to amnesty, allowing people to convert to permanent residence. With regard to the H-2 program, he recommended replacing the State adverse effect wage rates with wages determined on a crop-by-crop basis; replacing the lengthy certification process with a fee or payroll tax linked to the duration of the visa; and encouraging employer associations to do the recruitment and help enforce the program, with withdrawal of workers for violation.

I. Administration panel

1. Diego Asencio, Assistant Secretary for Consular Affairs, Department of State;
2. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service, Department of State.

1. Diego Asencio testified in favor of the Administration's proposed nonimmigrant visa waiver bill, noting that it would greatly reduce their workload, allow for a shifting of consular officers to countries with the greatest need, facilitate legitimate travel, and benefit both our relationships with other countries and our balance of payments. The visa waiver would be limited to countries where there traditionally have not been problems of visa issuance or abuse. Mr. Asencio briefly reviewed the adjudication process and outlined measures they had taken to reduce fraud, including anti-fraud workshops.

2. Doris Meissner focused on three areas: nonimmigrant document control, foreign student policy, and the pending visa waiver legislation. Regarding nonimmigrant document control, she said they expected to have an automated nonimmigrant document control program functioning by January 1983.

Regarding foreign students, she said that INS was operating under the basic premise that it was strongly in the U.S. interest to have foreign students here, economically, culturally, and as a matter of foreign policy. For control purposes, she said it was important to have accountability among the schools which register the students, and to have accurate and timely information on the students. She said they would be issuing new regulations on foreign students in 30-45 days which would basically call for relying more heavily on the schools for assistance in maintaining information on the students as a means of more effective control. Regarding the visa waiver legislation, she said they were planning for implementation with the State Department, and that their nonimmigrant document control efforts were based on the premise that the visa waiver legislation would pass and they would be in a position to support it with the necessary information.

Questions: In response to a question regarding the high percentage of visa abusers among the illegal alien population, Ms. Meissner noted that the nonimmigrant document control program was a timely information system, and would be useful in support of ongoing enforcement efforts. She said they currently had "very little capacity" to share information with other agencies, and they would be better able to assist other agencies in the future. She said that the information necessary to implement the visa waiver program would be available in time to implement the proposed program. With regard to funding, Ms. Meissner said there was $1.7 million in the fiscal year 1982 budget for the current I-94 nonimmigrant control program, with a request for an increase of $800,000 for the new system. She said the new system would cost about $5.9 million annually for "operating a timely and accurately on-line nonimmigrant information system."

Mr. Asencio observed that the visa waiver countries would be those with very low visa refusal and abuse rates, and an increase in those rates would mean that a country would be dropped from the program. They would also require nonrefundable return tickets. At a subsequent point he said they were talking about 28 countries which had a less than 2 percent refusal rate and which accounted for about 3 million of the 7 million nonimmigrant visas issued annually. Assuming the worst case, in which all the countries exceeded the 1 percent visa abuse rate which would trigger their being dropped from the program, this would amount to 30,000 illegal overstays, which they considered a minimal risk. He said they understood the public perception that "immigration policy is out of control," but that it was important to "compartmentalize" in order to release resources for countries where there was a high incidence of fraud. Quoting, "because people are walking across the border is no reason why we have to be examining the tonsils of Englishmen in London or Frenchmen in Paris or Germans in Bonn."

On the subject of foreign students, Ms. Meissner said their perception was that much of the abuse was traceable to certain schools and recruiters and to the fact that certain recruiting practices had not been monitored. She said they had to be more aggressive at checking on the schools, and that they had a lot of leverage through certifying them for recruitment that hadn't been used effectively, but that more careful scrutiny was underway. She said the new regulations would provide for a one-time recertification of all the participating schools, followed by ongoing monitoring. Senator Simpson questioned the witnesses about whether allowing students to adjust to immigrant status contributed to overstay, and they agreed that, while there were problems in allowing adjustments, there was no better alternative. In response to a question about the prevailing practice in other countries about extending employment opportunities to U.S. students, Mr. Asencio replied that it was his impression "that it is always possible to make some money as a student abroad, but to do it legally is devilishly difficult."

Senator Simpson questioned the witnesses about their response to charging or increasing fees to offset the cost of administering the nonimmigrant visa programs and immigration programs, and both responded favorably. Mr. Asencio said their basic philosophy was that their activities should be on a cost basis and they were fairly close to recouping their entire consulate costs with the outstanding exception of the immigrant visa, which they were working on. At that point, "the consular bureau will not cost the government a dime, and I think that is a fine objective to shoot for." Ms. Meissner said they could not match that record but were currently conducting a comprehensive review of the services they performed in relationship to fees. She noted the interest of the Administration in user fees as a general concept, and said INS would be proposing increasing the user fee approach.

J. Foreign student panel

1. Bayard L. Catron, Associate Professor of Public Administration. George Washington University;
2. Heather Olson, National Association of Foreign Student Advisors (NAFSA);
3. David North, Director, Center for Labor and Migration Studies, New TransCentury Foundation.

1. Bayard Catron indicated that while he was testifying as a private citizen, his testimony grew out of his work as a member of the President's Management Improvement Council. He said he believed the foreign student program continues to serve the national interest, and that there was no evidence that special enforcement efforts toward foreign students are warranted. In 1978, students comprised less than 8 percent of apprehended nonimmigrants and less than 1 percent of all deportable aliens located. Although the initial inability of INS to account for the Iranian students "fostered the impression that the student program was out of control," the final results of that effort did not verify that impression. In summary, he said, "I also believe that although no new legislation is needed in this area, management improvements are highly desirable to eliminate adjudications, to develop a reliable foreign student information system and to implement effectively the statutory provision for school approval and reporting."

2. Heather Olson, testifying on behalf of NAFSA, indicated that they shared "with the Government a deep concern about the balance between controls over foreign students and their freedom to

carry out their educational programs." She proposed a system "which would place the primary responsibility for maintenance of status on the student, the responsibility for reporting within carefully defined guidelines on the schools, and the responsibility for enforcement" on INS. She suggested that INS has been lax in enforcement.

3. David North proposed the separation of academic from vocational education programs [which has since been accomplished by P.L. 97-116]. He believed this would allow closer scrutiny of the latter programs where abuse has been found by GAO and others to be more widespread.

Questions: Senator Simpson noted and agreed with the shared perception of the witnesses that the schools and universities that accepted foreign students served "an extraordinary role as an agent of cross-culture understanding of domestic and foreign students." In response to questions about control, it was noted that INS I-20 "F" nonimmigrant student forms were now numbered. It was suggested that user fees might more appropriately be charged as part of the initial certification process than for the forms, since students frequently required multiple forms. There was also support for requiring nonrefundable return air tickets of foreign students.

Mr. North indicated that his research had not shown a significant negative impact of foreign students on the labor market, an opinion shared by Ms. Olson. Mr. North contrasted foreign students in this respect with H-2 workers, noting that, "The restrictions on them are not such that they make them more attractive workers, whereas the restrictions on the H-2's do make them more attractive workers."

Mr. Catron indicated the need for a centralized, automated information system on foreign students which would be "a subcomponent of the nonimmigrant document control system." He also emphasized the importance of holding the schools, as institutional sponsors, responsible for maintaining information. He said the development of a student information system required the recertification process and a commitment to enforcing the regulations on non-complying schools. Ms. Olson agreed with him, noting that the basic information on the Form I-20 would constitute a valid data base, and indicating approval of INS's proposal for recertification of participating institutions.

K. Norman J. Philion, executive vice president, Air Transport Association of America

Mr. Philion testified on behalf of the scheduled airlines of America in support of the Administration's proposal to waive the visa requirement for visitors from selected foreign countries. He suggested that the provision that noncomplying airlines be penalized $1,000 be eliminated, noting that the strongest incentive for compliance would be that non-complying airlines would not be allowed to participate in the visa waiver program, and their contract with the Federal Government would be cancelled. He indicated his belief that little screening was being done in the process of issuing visas by mail, and that the elimination of the requirement consequently posed no danger to national security. He thought there was adequate INS inspection at the ports of entry, and said that INS inspectors at Kennedy Airport in New York did not believe the visa waiver would increase their workload.

XII. DECEMBER 11, 1981, HEARING ON "NONIMMIGRANT BUSINESS VISAS AND ADJUSTMENT OF STATUS"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan Simpson (Chairman of the Subcommittee), presiding.

Present: Senator Simpson and Senator Grassley.

A. Opening statement by Senator Simpson

Senator Simpson said the hearing would focus on the nonimmigrant visas used by executives and technical personnel to enter the United States, and on the adjustment by nonimmigrants to permanent resident, or immigrant, status while in the United States under Sec. 245 of the INA. The nonimmigrant visa categories under consideration, as popularly known by the letters of their subsections of Sec. 101(a)(15) of the INA, were B-1, visitors for business; E-1 and E-2, treaty traders and treaty investors; H-1, persons of distinguished merit and ability; and L, intracompany transferees.

Senator Simpson noted the importance of these visas in connection with U.S. business and the economy, and, conversely, the abuse of the visas by people seeking to enter for other than temporary purposes, and the problem in some instances of displacement of U.S. workers. He raised the general issue of control as it relates to the variety of business-related categories, adjustment of status, and prevention of adverse effects on U.S. labor.

B. Administration panel

1. Diego Asencio, Assistant Secretary for Consular Affairs, Department of State, accompanied by Cornelius D. Scully;
2. Doris Meissner, Acting Commissioner, Immigration and Naturalization Service, Department of Justice.

Statements

1. Diego Asencio said that "temporary entry for business purposes is of increasing significance and complexity, apparently due to the increasing internationalization of trade and business activity generally, and to the increasing importance of both foreign investment in the United States and American investment abroad." He described the business-related nonimmigrant categories under consideration. He also expressed support for continuing the adjustment of status provision, noting that aliens adjusting to immigrant status in the United States were required to meet the same substantive requirements as those issued immigrant visas abroad. On the basis of past history, he said the absence of the adjustment of status provision would be likely to create other problems.

2. Doris Meissner said that of the four visa categories under discussion, INS had no formal role in the review process prior to the issuance of B-1 and E visas, although they had considerable border

responsibilities regarding B–1, visitor for business, entries by Canadians, Europeans with indefinite B–1 visas, and Mexicans with border crossing cards. INS is involved in the review process prior to the issuance of L intracompany transferee and H temporary worker visas. Ms. Meissner indicated the L visa had caused them some problems because it was sometimes difficult to determine affiliation between overseas and U.S. firms, and they were attempting to streamline the L visa petition review. She expressed support for a continuation of the adjustment of status provision, noting that while there was probably some abuse, the alternatives were worse. She said they proposed tightening administrative procedures as a means of providing increased control.

Questions: In response to a question from Senator Simpson about the desirability of continuing the four separate categories of business visas, both witnesses agreed that the advantages of reducing the number of categories were outweighed by the administrative advantages of maintaining the current distinctions. Ms. Meissner said that the B–1, visitor for business, category has given them the most trouble because it is very open and undefined.

Senator Simpson noted the Labor Department clearance requirement in the issuance of H–2 temporary worker visas, and asked the witnesses if it should be required of H–1, persons of distinguished merit and ability, as well. The witnesses indicated there is currently no adverse impact finding, and Ms. Meissner said that "the categories that fall under H–1 are assumed to be categories where either the impact is not adverse or it is not sufficiently destructive of U.S. interests to require that individual examination." However, the witnesses indicated a willingness to consider labor certification for some aspects of the H–1 program, perhaps by the professions involved.

The different petitioning requirements for the nonimmigrant business visas were discussed. B–1 visitors for business and E–1 and E–2 treaty traders and investors applications are submitted directly to the consular officer with no INS petitioning requirement, while the H–1 and L intracompany transferee visas require submission of a petition to INS. Ms. Meissner explained that the system was pragmatic, that "the employer was the motivating element in each of these visa categories, and if the employer is essentially Stateside-based, the application is made through the Immigration Service. By the same token, if the employer is essentially overseas-based, he goes to a consular officer." Neither she nor State Department witnesses favored a change in these procedures.

Adjustment of status was discussed at some length, with both State and INS favoring its retention. Mr. Scully explained that while aliens gained the benefit of being allowed to acquire permanent resident status without leaving the United States, they were "subject to the same substantive rules for qualification that apply to an immigrant visa applicant abroad." In response to a question by Senator Simpson, he reviewed past experience with pre-examination, a "cumbersome" administrative procedure whereby aliens applied for visas in Canada prior to the adoption of an adjustment of status provision in 1952. He noted that the provision had been present in the law in varying forms since then, with variations of the pre-examination procedure "when the restrictions have been perceived as being excessive." Ms. Meissner noted that 85 percent of the adjustments of status were on the basis of relative connections, and that a change in procedures for the remaining 15 percent would probably be ineffective. She said total adjustments were about 175,000 a year, up considerably from 10 years ago "because of the overall increased numbers of people coming to the United States."

There was some discussion of whether the exclusion requirements for nonimmigrants should be substantially simpler and less restrictive than for immigrants. Mr. Scully indicated he did not believe the present requirements encouraged adjustment of status, and Ms. Meissner indicated a willingness to explore the subject further.

In response to a question by Senator Grassley, Mr. Asencio and Mr. Scully said that the State Department did not favor making consular officer's decisions appealable. Mr. Scully said that while there was "no quasi-judicial or judicial appeal mechanism," there was a fairly systematic administrative review procedure, which he described. They indicated that a more formalized judicial review mechanism would be burdensome, particularly in view of the fact that about 8 million nonimmigrant visas are issued a year.

C. Panel

1. William F. Cagney, National Foreign Trade Council, New York;
2. Austin T. Fragomen, Chairman of the Board, American Council on International Personnel, New York;
3. Harold J. Ammond, Council of Engineers and Scientists Organization, Haddonfield, New Jersey;
4. Irwin Feerst, President, Committee of Concerned Electrical Engineers, Massapequa Park, New York.

Statements

1. William Cagney represented the National Foreign Trade Council, "a nonprofit association of over 650 United States companies engaged in foreign trade and investment." He outlined four recommendations regarding the nonimmigrant visas under consideration: (1) allow reputable companies to handle their own L-1 visa programs, similar to the current arrangement for J-1 exchange visitor programs, and allows L-2 spouses to work in the United States; (2) extend H-1 and H-3 visas for the period of anticipated length of stay, perhaps limited to 3 years, like the L-1 visa; (3) grant long-term nonimmigrant visa stays, for up to 10 years, in response to the growth of multinational corporations and their international management requirements; and (4) facilitate the granting of adjustment of status petitions for those on nonimmigrant visas.

2. Austin Fragomen, representing the American Council on International Personnel, recommended that the question of an alien's intent to remain here permanently should be eliminated as a factor in the granting of L visas. He also recommended the establishment of an L visa program similar the J visa program, shifting part of the burden from the consular posts to the companies which wished to qualify. He agreed with the previous witness, Mr. Cagney, about the need for extending L visas for the alien's duration of stay, noting "that many of the restrictions in the nonimmi-

grant area force persons to apply for permanent residence"; and he opposed the prohibition against spouses working, noting that A and G spouses can get permission to work where it is shown to have no adverse effect on the labor market. He recommended the establishment of a new nonimmigrant class for investors. He concluded by saying that, regardless of what changes are made in the nonimmigrant visa category, all will be for naught "unless the Immigration Service wipes out the backlogs, makes prompt adjudications, and responds to the public in a meaningful way."

3. Harold Ammond testified on behalf of the Council of Engineers and Scientists Organization (CESO), "a national coordinating council for 10 independent labor organizations representing engineering, scientific and technical employees" at major U.S. companies. He said that they had been involved in H-1 and H-2 criteria for certification since 1978 and that their position remains unchanged: "for virtually every engineering position, an American engineer could be found." He believed industry's problems in finding U.S. workers were traceable to their recruiting methods and the level of pay. Specifically, he said that nationwide recruitment is necessary because "the professional labor market is truly a national one"; and "aliens will work for less." He recounted CESO's experience with setting up a nationwide registry system, CESOR, for the Labor Department and said that it "would have been more successful, had industry extended its cooperation." In closing, he said CESO did not oppose bringing in "truly extraordinary intellectual giants envisioned by H-1 visas," but it did oppose bringing in undeserving people on H-1 visas and allowing American companies to convert H-2s to H-1s.

4. Irwin Feerst testified on behalf of the Committee of Concerned Engineers and was extremely critical of the current law and practices regarding foreign students and H-2 workers. He argued that foreign students were costing the taxpayers money, working for less than the domestic workers they were replacing, and should not be allowed to remain here.

Questions: Senator Simpson questioned Mr. Cagney about the charge that companies discharge their American engineers in order to hire foreign students at a lower wage. Mr. Cagney replied that they were talking about different groups of people, that his concern about the L visa focused on very expensive, mobile international personnel. In response to further questioning, he said other countries allowed long-term visas and were puzzled by our restrictions.

Mr. Fragomen reiterated a recommendation also made by Mr. Cagney that major companies which were constant users of the L visa should be able to file for a formal program designation and thenceforth be allowed to issue documents directly to the aliens. The aliens applying for L visas would bring these documents directly to the consuls, who would then determine whether the aliens were in fact managerial executives who had worked with the company for a year abroad, etc. Mr. Fragomen indicated that, as presently administered, the L intracompany transferee visa involved excessive delays and documentation requirements.

Mr. Ammond said he believed that needed foreign engineers should be admitted permanently because of the cyclical nature of engineer shortages and surpluses. He said currently there was a shortage, but they felt it could be addressed by a nationwide recruitment system. He indicated he was talking primarily about H-2 engineers.

D. Panel

1. Sam Bernsen, Esq., Fragomen, Del Ray and Bernsen, Washington, D.C.;
2. Charles C. Foster, Esq., President, American Immigration Lawyers Association, Houston, Texas;
3. Richard Goldstein, Esq., President, New York Chapter, American Immigration Lawyers Association, New York, New York;
4. Esther M. Kaufman, Esq., Law Offices of Esther M. Kaufman, New York, New York.

Statements

1. Sam Bernsen argued in favor of continuing to allow aliens to adjust from nonimmigrant to immigrant status in the United States. He said those opposed to it misconstrued the statute, overlooked the history of the legislation, and overlooked the fact that they would simply be shifting the workload from INS to equally overburdened consular officers abroad. He emphasized that an immigrant visa had to be immediately available for a nonimmigrant to be eligible for adjustment, and argued that there was no useful purpose to be served in making him return home to apply for a visa there. Mr. Bernson reviewed past experience with pre-examination prior to the enactment of an adjustment of status provision in 1952 and subsequent liberalization of the law. He said there was no evidence whatever that adjustment of status contributes to the illegal alien problem.

2. Charles Foster also discussed adjustment of status and urged its retention. He argued that aliens gained no special benefits from it, and that without it there would be substantial expense and a possible disruption of the alien's stay here. He also said the statistics did not indicate abuse. He argued that it did not contribute to illegal immigration and was perhaps an incentive to maintaining legal status, since that was an eligibility requirement.

3. Richard Goldstein discussed investor visas and nonimmigrant E visas. He said that our present system does not adequately provide for immigrant visas for investors or wealthy retirees, since the nonpreference category for which they had previously been eligible has not been available since 1978. He noted the immigration opportunities for investors in England and Singapore, and suggested we adopt a system of admitting investors who are willing to make a substantial investment in specially-designated programs or communities. He also recommended the admission of E nonimmigrants for the duration of their visa status, noting that the visas are generally adjudicated for 4-year periods overseas, but the individuals are admitted for one-year intervals.

4. Esther Kaufman focused her comments on the implementation of the law. She noted that the Immigration Service was seriously understaffed and often undertrained, and that there were "incredible" inconsistencies in the adjudication by different districts of essentially identical petitions. She said that INS's "present situation creates a sort of self-perpetuating backlog mechanism," since

people are pulled off the regular workload to handle "expedites," which in turn creates more backlog and more expedites. Ms. Kaufman concurred with Mr. Cagney's recommendation that the L visa program be organized like the J visa program, permitting and requiring "the employer to bear the brunt of the processing and enforcement."

Questions: Senator Simpson asked whether the holders of B visitors for business and pleasure and F student visas should be made ineligible to adjust status, since three-quarters of the nonimmigrants who adjust come from those two groups. Mr. Bernsen said that while Congress could do that, he questioned the advisability of it since he did not consider adjustment of status "an end run around the immigration system." Quoting further, "I do not believe it's an abuse, because these people must comply with all the rules, just as the person abroad." Ms. Kaufman subsequently concurred.

Mr. Goldstein indicated he did not think we had too many business-related nonimmigrant categories, and that the problems lay with lack of uniformity in decisionmaking. He said he thought the problem "is just simply that we don't have any system of uniform adjudication on a national and international basis," a point previously emphasized by Ms. Kaufman. Mr. Goldstein also discussed the Japanese E visa situation at some length, noting that U.S. processing of E visas in Japan had apparently grown lax and had recently been tightened up.

Ms. Kaufman indicated she did not believe allowing reputable companies to handle their own L-1 visa petitions would lead to abuse, or instituting a long-term nonimmigrant visa would lead to a significant building up of equities. Mr. Foster said that he believed there should be a right of appeal from consular officers' decisions denying visas. However, he did not believe that aliens seeking permanent resident status come here as nonimmigrants because it allowed them the right of appeal; he noted that the principal attraction for such entry would be to find an employer.

XIII. JANUARY 25, 1982, "NUMERICAL LIMITS ON IMMIGRATION TO THE UNITED STATES"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Senator Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senator Simpson (R., Wyo.).

A. Opening statement of the subcommittee chairman

Senator Simpson opened the hearing and said that it would focus on numerical limits on immigration to the United States and various criteria for determining the limits. He indicated that the subcommittee would try to obtain varied views and analyses of the factors to be considered in deciding whether a ceiling on immigration should be established and what mechanisms should be used to adjust any ceiling. He pointed out that this hearing is one of the last in a series before the subcommittee completes its final draft of a comprehensive immigration and refugee policy reform bill.

B. Administration panel

1. Alan C. Nelson, Deputy Commissioner, Immigration and Naturalization Service (INS);
2. Honorable Diego C. Asencio, Assistant Secretary for Consular Affairs, Department of State (DOS);
3. Ms. Marion Houstoun, Immigration Staff Specialist with James A. Orr, Bureau of International Labor Affairs, Department of Labor (DOL), Accompanied by Dr. James A. Orr, Bureau of International Labor Affairs, DOL;
4. Roger A. Herriot, Chief, Population Division, Bureau of the Census, Department of Commerce (DOC).

Statements

1. Mr. Nelson said that in addition to immigrants entering under the preference system, approximately 140,000 other immigrants enter outside the numerical limitations, most either immediate relatives of U.S. citizens or refugees. He said that in fiscal year 1980, 231,700 refugee admissions were authorized and about 214,000 were approved; in fiscal year 1981, 217,000 were authorized and 158,500 were approved; and in fiscal year 1982, 140,000 have been authorized. He said the Administration believes the existing laws regarding overall numbers should not be changed nor should the reunification of immediate family members of U.S. citizens be curbed. However, he said the Administration favors increasing the annual limit for Canada and Mexico to 40,000 each. He indicated that the Administration opposes creating an overall cap on refugee and immigration numbers because it is impractical, is not "in the interests of the American people," and creates potential limits in foreign policy matters.

2. Ambassador Asencio reiterated the changes proposed by the Administration and described by Mr. Nelson. He said the unused portions of either Canada's or Mexico's 40,000 limitation could be used by natives of the other country. He indicated that the Administration is opposed to other changes to the overall system of numerical limitations and said that they believe establishing an absolute ceiling would result in excessive rigidity in the immigration system.

3. Ms. Houstoun submitted Under-secretary Lovell's statement for the record and summarized it. She said the DOL supports the current tripartite system for controlling the number of aliens admitted as permanent residents. She indicated that the DOL believes there are no labor market reasons for replacing the current system. She said most variations in overall numbers during the 1980s will be due to changes in refugee flows. She said, further, that the number of new workers entering the labor force annually from new arrivals in the United States is of little consequence to the labor force. Without refugees, immigration would account for about 10 percent of the annual increase in the labor force and with refugees, for about 15 percent. She said that adjusting immigration levels based on varied refugee admissions or on U.S. labor market conditions would cause administrative burdens and personal hardships because the admission of immigrants would become subject to unforeseeable delay. She indicated that unemployment rates are

too crude and unreliable to be used for setting immigration limits. She stated DOL's opposition to allocating more immigrant worker visas at the expense of relative visas.

4. Mr. Herriot indicated he would focus on the kinds of data on immigration and the foreign born population developed by the Census Bureau. He said the 1980 census will provide a wide range of data on the characteristics of past immigrants, but the sample data will not be processed until late in 1982 at the earliest. Subject reports will be prepared from the data. He gave a brief historical overview of the numbers of people immigrating to the United States and changes over time. He also discussed Census Bureau research on illegal immigration. He addressed the projected impact of immigration on population in the United States over the next 30 years.

Questions: In response to questions from Senator Simpson about the possible effect of an overall cap on immigration, Mr. Nelson explained that under the Displaced Persons Act of 1948, immigrant visas were mortgaged against future numbers and there was such a backlog of mortgaged visas that Congress passed legislation to clear it up. Senator Simpson asked what percentage of family reunification entries came from relatives of citizens who were once refugees and Mr. Nelson indicated that there are not good statistics on that. In response to questions from Senator Simpson regarding asylum, Mr. Nelson said there were about 105,000 applications pending at the first of 1982, about 30,000 of which are from the Cuban boatlift. He said INS completes approximately 4,500 asylum cases/year. He pointed out that there has been a large increase in the number of asylum cases in recent years and recommended streamlining the asylum process.

In response to further questioning from Senator Simpson regarding the Administration's proposed legalization program, Mr. Nelson said that it was difficult to predict how many people would be involved, but that they estimate about 300,000 would qualify for permanent resident status, with ½–1 million qualifying for temporary status. He indicated that it is difficult to predict how this would affect future immigration and illegal immigration. He said the current backlog for spouses and minor children to join Mexican permanent residents in the United States is about 9 years and that additional backlogs would result from the legalization program which, in turn, might provide increased pressures for illegal immigration.

In response to Senator Simpson, Mr. Nelson and Ambassador Asencio descussed the role of foreign policy in immigration. Mr. Nelson indicated that there is an inter-relationship; Ambassador Asencio emphasized the distinction between immigration and refugees, pointing out that the Secretary of State does not dictate immigration limitations. Ambassador Asencio said immigration can impact on foreign policy negatively unless great care is taken.

Senator Simpson asked why such a small percentage of Mexican-Americans have naturalized and Ambassador Asencio said that the Hispanic community hasn't emphasized this; that the contiguity of borders makes it possible for family members to enter illegally and thus the desire for citizenship so that family members could enter under the quotas may be less; and that the naturalization process is cumbersome.

Senator Simpson addressed the question of executive flexibility in overall numbers of people admitted and Ambassador Asencio said that such flexibility is necessary for emergency situations.

Senator Simpson asked whether the effect of immigration on the labor market differs in various regions of the country, and Mr. Orr indicated that it does but that the effect depends on the specific skill levels of the immigrants and the industrial structure of the local area. Senator Simpson asked about future labor shortages and Mr. Orr responded that statistics suggest there will not be as many young workers available in 1990 as there are today. However, he said the market can make adjustments to reduce the need for young workers.

In response to questions from Senator Simpson regarding the role of DOL in assisting in the employment of refugees, Ms. Houstoun said DOL is sensitive to the change in skill level of Indochinese refugees. She said the Department was involved in job placement activities for earlier refugees while for recent refugees they are involved with training activities. She said the recent Indochinese refugees enter on-going programs for the disadvantaged which are modified for their special needs. In response to further questioning by Senator Simpson regarding what effect additional entries might have on the labor market and whether it might "be more prudent to wait until our economy has hopefully righted itself before bringing in additional numbers," Ambassador Asencio said the Administration's program attempts to reduce the total number of entries, including illegals, by raising the legal immigration numbers.

C. Statement of the Honorable Robert Garcia, a Representative in Congress from the 21st Congressional District of the State of New York

Representative Garcia indicated that he believes numerical limits on immigration are the "heart of our complex immigration problem." He said he believes the law must be flexible and subject to periodic review. He added that it is questionable whether immigration policy should be indexed to economic, social and demographic variables, although such variables should be considered. He suggested that an interagency council of foreign policy, labor, legal and statistical experts might provide the best framework from which to review immigration policy. He indicated that he believes immigration policy should be separate from refugee policy; that limits on immigration should not include refugees; and that family reunification should not be affected by numerical limits. He emphasized that the final decision regarding immigration policy rests with Congress and that the welfare of the nation should come first, but that the United States cannot make its decision in isolation from the rest of the world.

D. Panel

1. Loy Bilderback, Zero Population Growth;
2. Thomas Espenshade, The Urban Institute;
3. Charles Keely, Center for Policy Studies, the Population Council.

Statements

1. Mr. Bilderback indicated that he is concerned about immigration from Mexico and the Caribbean and that he would like a firm cap put on entries. He said the United States can afford a gross immigration of 300,000–325,000 people per year and that anything beyond that would be destructive to U.S. resources.

2. Mr. Espenshade indicated his testimony is based on non-partisan analysis and that any views expressed are his and not necessarily those of The Urban Institute. He said that the U.S. birth rate is low enough that, without immigration or emigration, the U.S. population would eventually decline. However, immigration to the United States exceeds emigration from this country, so that we have positive net immigration. He said if current conditions existed indefinitely, we would have zero population growth in the long run, as would result from any combination of fixed birth level below replacement coupled with any fixed level of immigration. He said his analysis suggests that for policy purposes, numerical limits on immigration could be tied to recent fertility levels. This he said, would alleviate the problem of predicting future U.S. fertility, allow flexibility in setting immigration limits, and be fairly easy to implement.

3. Mr. Keely suggested that a numerical limit on visas be invoked for 5 years with a sunset provision, with responsibility for limited adjustments of annual allotments being given to an Immigration Council. He said he believes numerical limits should be limited to immigration per se and that refugee admissions should be set under the provisions of the 1980 Refugee Act. He said that although he perfers continuing to exempt immediate family members from numerical ceilings, total limits that include them could be set. He said he considers both family reunion and foreign policy to be criteria affecting numerical limits. He addressed economic and demographic criteria, including the absorbent capacity of the United States, which he believed to be capable of handling new entries.

Questions: Senator Simpson asked what a stabilized U.S. population might optimally be and Mr. Bilderback said that, although it depends on how we want to live, someplace below 230 million. Mr. Espenshade and Mr. Keely indicated that there is no reliable way to determine the optimum size of the U.S. population.

Senator Simpson asked whether there are demographic arguments for avoiding domination of immigration to the United States by a relatively few countries and Mr. Keely said he does not think so. Mr. Espenshade pointed out that the fertility levels of entering immigrant groups gradually adjust to U.S. fertility levels and that if the composition of immigrants leans toward countries that have low fertility to begin with, there would probably be slower subsequent growth in the United States than if the immigrants were concentrated in high-fertility countries.

In response to questions from Senator Simpson, Mr. Espenshade said that if 400,000 net immigrants came to the United States, and there is an assumed fertility rate of 1.8 and 1.85 lifetime births per woman, the United States would grow to about 260–265 million in about 45-50 years and then gradually decline to level off at about 108 million.

In response to questions from Senator Simpson, there was discussion of foreign policy concerns and immigration. Mr. Keely pointed out the interaction between the two and the need to be aware of those implications. Mr. Bilderback said that in the Caribbean, the growth in the work force in the next 20 years is going to be so large that the United States cannot relieve the pressure.

Senator Simpson asked if the formulas discussed in the testimony accounted for illegal immigration and Mr. Keely said that his suggestions assumed a sharp decrease in illegal immigration and Mr. Espenshade said he considered all entries without distinguishing them by their legal status.

E. Panel

1. Leonel Castillo, Immigrant Aid Society, Inc.;
2. Garrett Hardin, Chairman, The Environment Fund;
3. Aristide Zolberg, University of Chicago.

Statements

1. Mr. Castillo indicated that he believes the number of immigrants and refugees admitted to the United States should be set in law, but that the limit cannot be easily indexed to economic and demographic variables. He said the numerical limits should be flexible and comprehensive and that a set number should be identified for refugees. He said he believes the emphasis should be more on family unification and less on labor needs. He suggested that granting at least 40,000 more visas to Mexico, not necessarily linked to Canadian numbers, and a temporary resident program would help deal with the flow. He also suggested imposing user fees and entry and departure fees to help cover the cost of services offered by INS, DOS, and Customs.

2. Mr. Hardin indicated that the numerical limit should be a total limit because the total numbers impact on this country, whatever category they may belong to. He said increasing population can lead to diseconomies of scale, whereby communication between all the people becomes increasingly difficult. He also indicated that immigrants are "more of a threat to the national unity" than indigenous people because they must be acculturated or divisiveness occurs.

3. Mr. Zolberg indicated that heterogenous racial and religious sentiments of earlier waves of immigrants have been unified by use of the English language and concern has now shifted to linguistic minorities in the United States. He said he believes current immigrants will continue to learn to use English for a number of reasons, including its firm position as the dominant language in the United States. He addressed the need for numerical limits on immigration, suggesting that these limits be viewed as a "comprehensive moving average target" in which immigration numbers could be compressed as necessary to accommodate changes in illegal entries and refugee entries.

Questions: Senator Simpson asked Mr. Castillo what limit should be imposed on immigration and what number should be set aside for refugees. Mr. Castillo responded that a limit of about 300,000 plus family members would bring legal immigration to about ½ million, depending on the number of refugees. He indicated that a legalization program might mean an increase in the numbers applying for family reunification status from Mexico, but that no one knows how many people would be affected. He further indicated that family reunification backlogs might disappear if there was a legalization program and additional numbers for Mexico. Senator Simpson said that he favors giving preference only to immediate family members, rather than to adult brothers and sisters, and that the subcommittee is considering dropping the fifth preference. Mr. Castillo indicated that he would give greater priority to reunification of spouses and children than brothers and sisters, but that he would not rule out the latter.

In response to questions from Senator Simpson regarding the low rate of naturalization among Hispanics, Mr. Castillo said he believes a variety of factors have contributed to the low rate, including feelings of prejudice, naturalization procedures, and the proximity of Mexico to the United States.

In response to questions from Senator Simpson, Mr. Hardin indicated that the ideal population size for the United States would be lower than it is presently. He said the current fertility rate won't affect the work force for 18 years and that there is time to adjust if the U.S. population is falling too low. In response to further questioning from Senator Simpson regarding the successful integration of waves of immigrants, he said that Americans signaled earlier immigration groups that "the immigrant was wrong" whereas today the message aliens receive is that "the immigrant is right" to continue foreign cultural practices rather than to integrate with society. Senator Simpson listed factors that may be less conducive to assimilation of ethnic groups today, including bilingual and bicultural education programs, a greater concentration of entries of a single language group, higher tolerance of ethnic diversity, and the proximity of Latin America which encourages continual contact. Mr. Zolberg said these things should be balanced against factors which provide incentives for non-English speaking immigrants to acquire English, including the need for English in the work force and for upward mobility. He said that concern about the integration of entering immigrant groups is evident throughout U.S. history and that the United States, as a result of its long-term immigration, has some heterogeneity that makes additional entries less problematical than they are in more homogeneous nations.

F. Panel

1. Phil Comstock, Citizens' Committee for Immigration Reform;
2. Ambassador Marshall Green, Population Crisis Committee.

Statements

1. Mr. Comstock indicated that his organization supports numerical limits to immigration of about 350,000 annually, but that they believe immediate relatives, special immigrants, and refugees should be exempt from these limits. He also recommended that an additional 100,000 visas be made available annually for 5 years to help clear the present backlog. He said 250,000 of the 350,000 visas should be allocated for family reunification. He said they estimate

that with these numbers there would be approximately 800,000 legal entries annually for the next 5 years. He indicated support for the participation of legal immigrants in the labor force and noted their positive contributions to the American economy.

2. Ambassador Green indicated that the United States alone cannot accommodate all those who are seeking a better life or fleeing persecution. He said that we must share that responsibility with others, but other countries are reducing the number of immigrants they will accept. He said the United States is receiving more legal and illegal entries than at any time in its history and that we accept for permanent resettlement about twice as many people as the rest of the world combined. He said the U.S. growth rate thus far exceeds the average growth rate of other developed countries. He said he believes there should be a fixed limit on immigration in the law, consistent with achieving national population stabilization enabling us to maintain a high standard of living and conserve natural resources and the environment. He indicated that refugee limits should be set separately under the provisions of the Refugee Act. He said, finally, that we do not know whether sufficient supplies of energy, water, food, and mineral resources can be obtained in the future to support a large and growing population at its current standard of living.

Questions: Senator Simpson asked what affect raising the total numerical limits would have and Mr. Comstock indicated that additional workers would initially increase job competition, but that there are also benefits from legal migration. He said legal migrants bring skills, ambition, and self-reliance. He said depletion of natural resources depends on those who control them; he added that human ingenuity and endeavor are renewable resources and that we shouldn't reduce them [by reducing immigration]. He said the temporary guest worker program proposed by the Administration would, as do undocumented workers, undercut American labor standards because of the "quality of employment available to them and the conditions under which they are compelled to accept it." He said guest workers are not able to "avail themselves of the protection under the law." Mr. Comstock also said that the majority of those who become legalized will probably find means to upgrade their status. He indicated that arriving at a proposed ideal population size requires a set of assumptions and that he doesn't think freezing the population at a given point is the answer. Ambassador Green indicated that he believes it is hazardous to make projections regarding future population increases, as past projections have demonstrated. He said that optimum levels of admissions to the United States should be studied carefully and a cap set, but that it should be subject to review if the population changes unforeseeably.

In response to questions from Senator Simpson, Ambassador Green said that the United States has done more to reduce death rates than birth rates in countries of the world and in that sense has contributed to the population explosion. He said there are strong pressures—including economic pull factors—for immigration to the United States and that, moreover, the "world is coming to depend more and more on the United States for food." He suggested that we should be paying more attention to these things.

XIV. FEBRUARY 9, 1982, "PROPOSED REGULATION CHANGES FOR REFUGEE ASSISTANCE"

Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Present: Senator Simpson (R., Wyo.).

Also present: Senator Hatfield (R., Ore.).

A. Opening statement of the subcommittee chairman

Senator Alan Simpson opened the hearing by saying it would focus on proposed changes to current regulations on Federal reimbursement to States for refugee cash and medical assistance. He indicated that refugee resettlement requires cooperation among Congress and various executive agencies. He said the proposed changes in regulation would hopefully represent greater equity between refugees and citizens in terms of eligibility for assistance programs, as well as a substantial cost savings for the Office of Refugee Resettlement budget. He pointed out that determining what can be expended for refugees affects the number we can admit. He said the proposed changes reaffirm that refugee resettlement is a Federal fiscal responsibility and promote refugee self-sufficiency "as swiftly as possible." He noted that Indochinese refugee dependency rates have been increasing.

B. Opening statement of Hon. Mark Hatfield, U.S. Senator from the State of Oregon

Senator Hatfield pointed out that as chairman of the Appropriations Committee and as a Senator from a State that would be greatly affected by the proposed regulations, he had interest in this area and appreciated the opportunity to join in the hearings. He said that it appears that a lack of consideration had been given to the impact of these regulations on States and counties and that the concerns of State and local governments must be addressed before the Department of Health and Human Services (HHS) implements the regulations. He said he would also like to discuss the Office of Refugee Resettlement's (ORR) fiscal situation and the budgetary impacts of the regulations.

C. Statement and Questioning of Phillip N. Hawkes, Director, Office of Refugee Resettlement (ORR), Department of Health and Human Services (HHS)

Mr. Hawkes said that ORR expects to finalize and implement a new cash and medical assistance policy for refugees by March 1. He explained the steps leading to the policy change, saying that in 1980 it was determined that there should be some parity between refugees and non-refugees, that employment incentives should be increased, and that Federal costs should be reduced. He said that in August 1981, dependent levels had increased to 67 percent and refugees had "begun to regard the 36-month Federal reimbursement as an entitlement." He said that some of the employability programs developed by service providers were 30-odd months in duration and enrollees were not expected to look for a job during that time. In developing the new policy, he said they recognized that there is a Federal responsibility to meet cash and medical assistance costs incurred by States for the full 36 months, and that refugees are most needy when they first arrive. He said the program developed will provide that for the first 18 months a refugee is in this country, he will receive benefits as they are currently defined and for the second 18 months, he will receive benefits equal to what a U.S. citizen would receive. He indicated that HHS is finalizing responses to comments received regarding the notice of proposed rulemaking published December 11, 1981.

In response to questions from Senator Simpson regarding the impact of the proposed changes, Mr. Hawkes said the Federal Government would continue to cover those costs which States are required by law to pay for the first 36 months. He said it is difficult to assess how a number of people not having access to any program after 18 months will affect the States. He said he couldn't point specifically to any cost they are transferring directly to States. He said HHS is developing and implementing a new targeted resettlement program that will redirect refugees from areas of heavy impact to other, more suitable areas of the country. This, he indicated, should mean that the impact on voluntary agency efforts will not be great. He said refugees would face some hardships. He said there are tremendous differences in general assistance levels nationally and "if people are going to move because the benefits are better somewhere else, there is already a lot of incentive to do that."

Senator Simpson asked what type of coordination ORR has had with other Federal agencies and constituent groups in preparing the regulations and Mr. Hawkes responded that "we have discussed * * * [the original proposed] policy and variations on that policy with anybody who would listen * * * for the last year and some months."

Senator Simpson asked how both the existing and proposed regulations impact on refugee dependency rates and what data exist to support projections in this area. Mr. Hawkes indicated that the policy change would, itself, change the dependency rate because fewer refugees would be eligible for benefits. He said he also believes "the word is out" in refugee groups, mutual assistance associations, and the political networks among refugee groups that the dependency rate must be reduced.

Senator Hatfield indicated that he would like to submit written questions to Mr. Hawkes for a written response. He commented on some aspects of the increasing dependency rate, noting that the time required to assist such recent entries as pre-literate refugees [e.g., Hmong] is longer than for other refugees and there should be flexibility to accommodate such variables. He listed some of the questions regarding funding that he would submit in writing and indicated that the Appropriations Committee would be looking for ORR's funding request and that they "had better have a pretty good handle on the relationship between those changes in regulations and some very hard data" on how they will save money. Senator Simpson noted the need for the Subcommittee on Immigration and Refugee Policy to work with the Appropriations Committee so that when refugee figures are determined in the consultation process, adequate funding is also specified.

Mr. Hawkes indicated that ORR anticipated the change in the regulations will "produce no savings this year" because the budget was predicated on a 49 percent dependency rate while the rate has risen to 67 percent. In response to further questions from Senator Hatfield, Mr. Hawkes said that they had issued second quarter grant awards that "took into consideration the policy change" and that if they had expended funds under the current policy, it would have cost $17-$25 million additional a month. He said he would provide data for Senator Hatfield, as requested, in writing.

Senator Simpson indicated that the Indochinese and Cuban/Haitian populations seem to require greater degrees of public assistance than other refugee groups and asked for the dependency figures for each group for the record.

D. Statement and questioning of David Pingree, secretary, Department of Health and Rehabilitation Services, State of Florida, accompanied by Barry Van Lare, staff director, Committee on Human Resources, National Governors Association, Washington, D.C.

Mr. Pingree indicated he was testifying on behalf of Governor Bob Graham of Florida in both his role as Chairman of the National Governors Association's Task Force on Immigration and Refugees and as Governor of Florida. He said that the Governors believe the Federal Government has the total responsibility to meet the basic needs of refugees and entrants for their initial 3 years and that they are very concerned about the proposed regulations. He described how the influx of Cubans and Haitians has impacted on Florida, resulting in "grave social and economic consequences." He cited the 1980 Refugee Act as supporting the idea that refugees are a Federal responsibility and said the intent of the act was for the Federal Government to provide 100 percent cash and medical assistance for refugees for 36 months from the date of entry. He said that a majority of the Cubans are self-sufficient and contributing to the economic base of the State, while most of the Haitians and 35-40 percent of the Cubans qualify for public assistance. He said the community's costs for transportation, education, criminal justice, housing, etc. have not been fully reimbursed by the Federal Government. He said the proposed regulations would "sharply reduce" the cash and medical assistance funding by the Federal Government for refugees. He said the rules were promulgated with "total disregard for the needs and concerns of State and local governments" and indicated that they were not consulted prior to the announcement of the regulations. He said that as of March 1, 1982, 25,000 people in Florida would lose their cash assistance and medical benefits, although they have been receiving funds for only one year. He said that "it is irresponsible on the part of the national government to expect these people to assimilate in that short period of time. * * *

Senator Simpson asked what documentation might be furnished showing that the current 36-month cash and medical assistance policy leads to effective and rapid assimilation. Mr Pingree said that the Cuban dependency rate drops significantly within a year, to about 35-40 percent, and that he did not believe Mr. Hawkes' dependency figures accurately reflected the Cuban population.

Senator Simpson asked what Florida's role had been in the formulation of various policy options by ORR and Mr. Pingree indicated that they were asked to comment when the proposed regulations came out; that State and local officials met with ORR on January 18, and requested a start up date of April 1; and that they later received a phone call indicating that the regulations would be effective March 1. Senator Simpson noted that there were "serious errors in timing with regard to the regulations, especially at a time when the Congress was headed into recess. * * *"

In response to questions from Senator Simpson regarding policy alternatives, Mr. Pingree said they believe the assistance should be available for 36 months, although "maybe something other than that will have to be looked at." He indicated he did not believe there has been adequate discussion of possible options. He said the targeted assistance program included a proposed $20 million to be distributed nationwide, while Florida's costs are running $41 million annually.

E. Panel

1. Jerry Burns, State Refugee Program Coordinator, Department of Human Resources, State of Oregon;
2. Susan G. Levy, Coordinator, Wisconsin Resettlement Assistance Office, Department of Health and Social Services;
3. Alan J. Gibbs, Secretary, Washington State Department of Social and Health Services;
4. Librado Perez, Social Services Agency, Alameda County, California.

Statements

1. Jerry Burns indicated that Oregon has attempted to increase refugee self-sufficiency and reduce public assistance dependency. He said their refugee population, 17,000, is three times their per capita share and that arrivals continue at the same rate. He said that 2 out of 3 refugees in Oregon are on public assistance and that refugee unemployment there is 49 percent. He added that Oregon's non-refugee unemployment rate is third highest in the nation and that social service funds in the State have been cut. He said Oregon has no general assistance program and no AFDC unemployed parent program and that 6,231 refugees would be cut off assistance on the day the regulations are implemented. He said, further, that Oregon, with 3 percent of the nation's refugee population, represents up to 15 percent of the anticipated funding reduction in the new policy. Mr. Burns indicated that if the proposed rules are implemented, Oregon would ask for Federal support in a letter to voluntary agencies asking them to not send refugees to Oregon until the State's economy improves and they assess their capacity to serve refugees with limited Federal funds; and they would notify those who are being terminated from public assistance, indicating support for their resettlement elsewhere. He said Oregon believes there are other means to reduce ORR expenditures, including eliminating the general assistance provisions of the current rule, using a food stamp definition of a houshold, or using other split eligibility levels for the assistance programs. He suggested that through consultation, a process could be developed

where one or more of the alternatives could be implemented in every State. He said that the 10 States with the highest refugee population plus five additional representative States should be convened to work with ORR in identifying the advantages and problems of various proposals and come up with a proposed rule.

2. Susan Levy urged that the subcommittee halt the implementation of the proposed regulations and require ORR to work with the States to find an "alternative package of cost saving options. * * *" She indicated that the proposed rules are based on fallacies and that they will create inequities and great hardship for refugees. She said they will retard refugee efforts to become self-sufficient, provide less assistance at a greater cost, and unduly burden States and municipalities. She indicated that more than 3,000 people would be terminated from the program in Wisconsin under the new regulations. She said, further, that 84 percent of the refugees who will lose assistance are stable families with many children. She said that 51 percent of those who would lose assistance "are, in fact, children." She maintained that any Federal savings realized would come at the expense of States and local governments. She pointed out that after 36 months of assistance, very few refugees went on general relief, illustrating that they do become self sufficient.

3. Alan Gibbs indicated that about 16,000 of the 31,000 refugees in Washington are on assistance and that on March 1, 9,000 of these would be terminated from all cash and medical assistance programs if the regulations go into effect. He said that Washington does not have a general assistance program for single adults or childless couples except in special circumstances and they have no unemployed parent program under AFDC. He pointed out that Washington has an unemployment rate of 11 percent and that it is unlikely that refugees terminated from assistance, many of whom have limited job skills and education, will find employment quickly. He said that community resources have already been strained and will probably not be able to provide cash or medical assistance to these people. He suggested that "a significant portion" of the terminated population would move from the State. He suggested, further, that the termination of the services would be very hard on refugee families, that the refugee assistance program has been and should remain a Federal responsibility, and that the policy should continue as a 36-month federally funded program.

4. Librado Perez said that it would be impossible to implement the proposed regulations by March 1 in Alameda County, California, because of specific legal requirements regarding advising clients of the impending action. He questioned whether the administrative costs of making the proposed changes would be underwritten by the Federal Government. He said that if such costs are not covered, they would have automatic eligibility for general assistance for refugees which would add about 50 percent to their existing general assistance caseload.

Questions: Senator Simpson asked Mr. Burns why the dependency rate is so high in Oregon and if the 36-month eligibility promotes dependency. Mr. Burns responded that Oregon's dependency rate is high because they have a high proportion of preliterate refugees; they have far more refugees than they can absorb and assist;

the State's overall unemployment rate is very high; and the sponsorship pattern shows that many refugees are sponsored by other refugees on public assistance. He indicated that it is difficult to know if 36 months is a reasonable limit because Oregon has more refugees than can be absorbed. He said, however, that "we do not hear of many hardships for those refugees who are cut off after 36 months." At a later point in the questioning, Ms. Levy said that refugees are motivated to get off welfare and that States "have every interest" in helping them do so. Mr. Gibbs agreed that the availability of cash and medical assistance for 36 months is not the main cause of dependency. He said the State and local governments and voluntary organizations try very hard to get the refugees to a self-sustaining point. Mr. Perez indicated his general agreement with these comments.

In response to questions from Senator Simpson regarding Oregon's preference for funding mechanisms for refugee assistance, Mr. Burns said that a combination of approaches might work but that there has to be enough money, provided in advance, to provide the services. He indicated that there was some consensus among the Western States that there is a need for on-going consultation between ORR and the States. The need for consultation was also expressed by Mr. Perez.

Senator Simpson asked whether Mr. Burns had suggestions in the sponsorship area and Mr. Burns said that he would stress the need for some kind of caseload standards to be established for voluntary agencies bringing refugees in. He pointed out that he agreed with many of the comments and suggestions contained in the report prepared by an ORR task force. He indicated that the voluntary agencies in Oregon face such a volume of entries that they are unable to do much follow-up or case management.

In response to questions from Senator Simpson, Ms. Levy said she did not believe impact aid would be an alternative for Wisconsin, that it would funnel money into heavily impacted areas with high general assistance, such as California, and that refugees would "impact on those places more." She said they favor an approach that deals with all the States equitably.

Senator Simpson asked about unaccompanied minors and Ms. Levy responded that Wisconsin has about 50 Indochinese unaccompanied minors and "all of the Cuban unaccompanied minors who did not have relatives."

In response to questions regarding social tensions relating to a perception among citizens that refugees have special entitlement programs. Ms. Levy said she believes tensions arise more out of competition for scarce community resources. At a later point, Mr. Gibbs said that the question of citizen equity "is not as large an issue as some would make it out."

Mr. Gibbs, in response to Senator Simpson, described the research done in Washington State regarding termination of the unemployed parent segment of the AFDC program.

F. Panel

1. Le Xuan Khoa, Coordinator, Council of Vietnamese Associations in the Greater Washington Metropolitan Area;

2. Wells C. Klein, U.S. Committee for Refugees, American Council for Nationalities Service;
3. John F. Herrity, Chairman, Fairfax County Board of Supervisors.

Statements

1. Le Xuan Khoa indicated that the Council supported appropriate regulatory changes but believed that "attempts to balance the Federal budget must be made fairly and responsibly to avoid administrative havoc for the States and the counties and an abrupt drop in assistance eligibility of vulnerable persons." He said that the general assistance provisions of the new policy could discourage States from participating in the refugee program and, over time, affect the U.S. ability to accept refugees. He said the proposed regulations, moreover, may not adequately provide for the most critical refugee needs, may reduce the possibility of refugees becoming self-supporting, and may encourage secondary migration. He recommended that: (1) the reduced period of eligibility be applied flexibly, with special consideration given to those age 55+ and unaccompanied minors; (2) the implementation date be pushed back 3 months for cash assistance and 6 months for medical assistance; (3) the training, career counseling, and language programs be intensified; (4) the family unit concept used in the Food Stamp program be used to reduce the number of split cases; and (5) the term "equity" be redefined to mean equal opportunity rather than identical treatment.

2. Wells Klein indicated that the organizations he represents support the intent of the proposed regulations but have serious reservations about the content and the implementation. He pointed out that in admitting refugees, we make a commitment to help them overcome disadvantages deriving from their status and to assist them to achieve economic and social self-sufficiency as quickly as possible. He said we also make a commitment to ensure that refugee resettlement is not an undue strain on communities. He said that it has been "known for some time" that fiscal year 1982 funding "was inadequate to support the continuation of the current cash and medical assistance policy" and that HHS could have proposed modifications in a "reasonable and orderly fashion" rather than imposing unrealistic timelines. He said the proposed implementation date would be a hardship for the States and for individual refugees. He said, in addition, that there is a lack of clarity in the regulations regarding whether Cuban/Haitian entrants will be eligible to participate for 18 months. Finally, he said the proposed regulations continue a "piecemeal approach to refugee resettlement. * * *"

3. John Herrity indicated that Fairfax County has 6,000 refugees, representing 1 of every 10 residents in the County, and that 1,500 households are receiving public assistance. He said that, because of their backgrounds, recent arrivals require more intensive and extensive resettlement services than prior arrivals. He indicated that the County favors the proposed 18-month limitation on assistance if "localities will receive enough funds to provide the social services necessary to assist the refugees in becoming self-sufficient within the 18 months allotted." He said that while about 50 percent of the

current refugee recipients would lose eligibility due to the 18-month limit, about 90 percent of those would be eligible for at least three more months of benefits under the general relief program. He said they believe this will allow sufficient time for refugees to find employment. He cited study results that show that most refugees begin in entry level jobs regardless of how long they have been in the United States and said that maintaining public assistance for 36 months is not helpful. He said reducing the 36-month eligibility may reduce community "tension and prejudices." He indicated that the County is concerned, however, about medical coverage for refugees after the initial 18-month period and "fear that strains will be placed upon Virginia State and local hospitalization programs. * * *" He said Fairfax County is receiving many refugees through secondary migration and they are concerned that this will strain their ability to provide quality services. For this reason, they support an impact aid program.

Questions: In response to questions from Senator Simpson, Mr. Herrity indicated that refugees were attracted to Fairfax County by the English as a second language program and the County's economic progress as well as by its public assistance program.

Senator Simpson asked about the high dependency rates among the Indochinese and Mr. Khoa said that recent refugees are much less educated than earlier arrivals and need more language and skills training. Mr. Klein, in response to questions from Senator Simpson, indicated that refugees are encouraged to go on public assistance soon after their arrival in the United States because it takes many weeks between applying for public assistance and receiving the first check and if the refugee isn't registered for assistance early on and cannot find a job in the first 4–8 weeks, he will have no support system. He indicated that his organizations support putting those refugees who are AFDC- and SSI-eligible on those programs immediately and having a relatively short period of eligibility for those who fall under the waiver of categorical aid or eliminating the waivers. In the latter case, he suggested that some other form of interim support should assist people for the first 6–12 months, but that they should not enter the public assistance system.

Mr. Klein pointed out that in no case is a dependent family a refugee sponsor. He indicated that an incoming refugee may live with such a family but that the responsibility for the incoming refugee rests with the voluntary group.

XV. APRIL 1, 1982, "IMMIGRATION REFORM AND CONTROL ACT OF 1982"

Joint hearings before the Subcommittee on Immigration, Refugees, and International Law of the House Committee on the Judiciary and the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary.

Rep. Romano L. Mazzoli (Chairman of the House Subcommittee) presiding.

Present: Representatives Mazzoli (D., Ky.), Fish (R., N.Y.), Lungren (R., Calif.), McCollum (R., Fla.), and McClory (R., Ill.) and Senators Simpson (R., Wyo., Chairman of the Senate Subcommittee on

Immigration and Refugee Policy), Thurmond (R., S.C.), Grassley (R., Iowa), and Kennedy (D., Mass.).

A. Opening statements of the subcommittee chairmen and other subcommittee members

Rep. Mazzoli outlined the background work done in developing the Immigration Reform and Control Act of 1982 (H.R. 5872/S. 2222), including the contributions of past immigration reform efforts and the study and report of the Select Commission on Immigration and Refugee Policy, as well as more recent hearings, investigative trips, and briefings. He described the positive reactions to the bill received thus far in newspapers across the nation. He pointed out that something will happen on immigration this year, that either the bill, with necessary modifications, will pass or the status quo will continue, "with the same chaotic and unsettled conditions prevailing in the future that prevail today."

Sen. Simpson noted that this was the second round of joint hearings held by these subcommittees in the past year, which he believed was an indication that immigration is not a partisan issue, "but one which affects the national interest and where both parties must work together to reach and frame a broad national consensus." He said he believed the bill reflected bipartisanship and should be addressed as a whole rather than as individual provisions. He noted that the bill addresses both legal and illegal immigration and he described some of the major provisions, including employer sanctions, legalization, and asylum adjudications.

Rep. Fish noted that the bill provides the U.S. with "an essential enforcement tool" in the form of employer sanctions to curb illegal immigration and that it restructures legal immigration to "guard against major increases" in future years. Sen. Grassley noted that although he didn't agree with every aspect of the bill, he was cosponsoring it and believed it was good vehicle for further discussions. He identified some of his major areas of concern with the bill as being the date established for the legalization program and the documentation to be used under the legalization program. He noted that the Select Commission recommended that a legalization program go into effect only after tools to curb the illegal flow of immigrants have been shown effective. Sen. Kennedy said that he believed the bill addresses some of the problems in the area of immigration, maintaining the balance between U.S. traditions of welcoming those who are persecuted and family members while addressing concerns at home. Although he indicated he had concerns in some areas of the bill, he commended the subcommittee chairmen on their "outstanding legislative craftsmanship." Both Rep. Lungren and Rep. McCollum indicated they were pleased to see the legislation introduced and to begin work on it.

B. Panel

1. Benjamin R. Civiletti, Cochairperson, Citizens' Committee for Immigration Reform and Former Attorney General of the United States;
2. Elliot L. Richardson, Cochairperson, Citizens' Committee for Immigration Reform and Former Attorney General of the United States.

Statements

1. Mr. Civiletti noted that U.S. immigration policy must "blend an incredible array of contrasting demands." He indicated that although the bill would require legislative examination and debate, he believed it successfully addressed most of the difficult issues. He said, "it bridges the conflicts, and I believe that it achieves effective reform." He praised some of the provisions, including those relating to overall limits on immigrant entries with consideration given to the special needs of Mexico and Canada; employer sanctions which include penalties that incorporate repeat offender deterrence and "leave reasonable flexibility for worker identification"; recognition of the need for improved border enforcement and a facilitated deportation process which incorporates fairness and due process; and the realistic yet compassionate legalization program which "strikes a fair compromise."

2. Mr. Richardson lauded the bipartisan approach used in structing the immigration legislation and noted that the bill also represented a distillation of thought and effort in this area over the years. He said that although he believed there might be some improvements in the bill, including addressing the situation of international civil servants who have long been residents in the U.S., he believed "that a substantial momentum for acceptance should attach to the legislation in its present form."

Questions: In response to questions from Sen. Simpson, Mr. Civiletti and Mr. Richardson indicated that they believe the considerations favoring the use of employee identification cards heavily outweigh the concern that it would be a threat to civil liberties. Mr. Civiletti said the proposed 3-year phase-in period would provide time to explore the necessary technology and allay fears that the system would be misused.

In response to further questions from Sen. Simpson, both Mr. Civiletti and Mr. Richardson indicated support for the proposed U.S. Immigration Board and judges system, although Mr. Civiletti said he had supported use of an Article I court to achieve the same objective the legislation is directed at.

Sen. Kennedy questioned whether employer sanctions wouldn't result in discrimination, whether the sanctions could be effectively enforced, whether the program aggravates when there is a "general feeling in the country that there ought to be less regulation in the workplace", and whether the program would be effective in helping alleviate the problem of illegal migration. Mr. Civiletti indicated that he didn't think the program required much of employers and thus didn't increase "red tape." He also said that he believes most laws are self-enforcing and that they would need to be prepared to expend the necessary resouces to deter those who do violate the law. Mr. Richardson agreed with Mr. Civiletti and added that the current problem clamors for "the soundest practical solution that can be devised". He said that we should not hold back "simply because of the worry that it may not be perfect."

Sen. Thurmond asked how long aliens should have been in the U.S. before being eligible for permanent residency and Mr. Civiletti indicated that the 1978 date for permanent residency and the 1980 date for temporary residency proposed in the bill were about right.

In response to further questions from Sen. Thurmond, Mr. Civiletti said he didn't believe that we could base refugee admissions on the economic conditions in the sending countries.

C. Statement and questioning of Bob Graham, Governor, State of Florida

Gov. Graham said he believes U.S. immigration laws are "inadequate to deal with our current problems." He noted that in order to "forestall the eruption of social chaos" in Florida, he was not terminating benefits to certain Cuban/Haitian Entrants until June 1, 1982, and he was requesting impact aid funds for services for the Entrants from the Department of Health and Human Services. He indicated that he supported the major provisions of the bill, but that he had some concerns, including concerns about the legalization program which would waive determining whether the Cuban/Haitian Entrants had come for political or economic reasons. He stressed the need for quick action on means to expedite asylum and exclusion proceedings and said that Rep. McCollum's proposal for an Immigration Court contained persuasive elements. He indicated that he believes that the use of the parole authority under immigration law should be examined and addressed in this legislation, including considering placing limits on the time for which parole can be granted and providing reimbursement for community costs associated with those paroled by the Attorney General. He also noted, in his capacity as a representative of the National Governor's Association, the need for a Federal contingency plan to deal with unanticipated flows of refugees or asylum applicants and indicated his support for S. 776, introduced by Sen. Huddleston, which mandates the development of such a plan. Finally, he noted that in his capacity as a representative of the National Governor's Association, he supported a more extensive nonimmigrant visa waiver program than that included in the proposed legislation.

In response to questions from Rep. Mazzoli, Gov. Graham said that under the proposed legislation, the United Kingdom, Germany (FRG), France, and Italy would not be acceptable for the visa waiver program because of the rejection ratio proposed for issuance of visas. In response to additional questions, he said that he believed that if a person paroled into the country violates that parole by committing a criminal act, he/she should lose their parole status and come under Federal custody. In response to questions from Sen. Simpson, he clarified his concern that the legalization program as structured in the proposed legislation might "inadvertently send a signal" to those in other nations that "if you can arrive in a large enough number * * * you can swamp our system and overpower the ability of our law to respond." Rep. Fish asked Gov. Graham to elaborate in writing on the need for a comprehensive Federal contingency plan to deal with future flows of asylum applicants.

D. Panel

1. Anthony J. Bevilacqua, Auxiliary Bishop, Diocese of Brooklyn, Chairman, Migration and Tourism Committee of the National Conference of Catholic Bishops/U.S. Catholic Conference;

2. Roger Conner, Executive Director, Federation for American Immigration Reform;
3. John Shattuck, Director, American Civil Liberties Union.

Statements

1. Bishop Bevilacqua stated that the church has supported regularizing the status of illegal aliens for many years and he indicated pleasure that a legalization program was included in the proposed legislation. He noted areas where they would suggest changes. (1) In the area of legalization, he suggested eliminating the temporary resident status and using the 1980 cutoff date for permanent resident status except for Cuban/Haitians, who would have an Oct. 1, 1981, cutoff date. He also suggested narrowing the grounds of inadmissibility so that only those who pose a threat to the communities or the security of the nation would be barred from receiving legalized state. (2) In the area of enforcement and control, he suggested the need for providing for uniform enforcement of immigration laws without selectivity or discrimination, particularly in relation to the proposed employer sanctions. (3) In the area of adjudication procedures and asylum, he indicated support for the U.S. Immigration Board and judge system and suggested the need to clearly detail in the legislation the availability of review of denials of asylum. (4) In the area of numercial limits, he said his organization is not comfortable with the cap concept and that eliminating future admissions of some categories of relatives violates the basic principle of family reunification. He suggested a compromise version that would allow for more entries under family reunification categories. He also noted that he believed the special immigrant class should include bona fide religious functionaries such as nuns and brothers.

2. Mr. Conner said his organization strongly supported passage of the proposed legislation. He said that immigration is out of control and that we cannot continue to admit as many immigrants as we are today because of our national unemployment problems and "burgeoning budget deficits." He said that regaining control over immigration would reduce unemployment and save taxpayers billions of dollars annually. He noted that in his written testimony, there are comments on particular points in the bill, including indication of FAIR's strong support of the prohibition against employment of illegal immigrants; support of a ceiling on total legal admissions, including immigrants and refugees; concern that the proposed U.S. Immigration Board should be reexamined; and concern about the legalization program proposed. He suggested the need for a sunset provision on the proposed level of legal admissions.

3. Mr. Shattuck indicated that the bill "represents the kind of reasoned treatment of immigration problems that is sorely lacking both in current law and in the policy of the current administration." He addressed two areas that he said were of particular concern to the ACLU: (1) building economic deterrents to employing illegal aliens; and (2) asylum. Regarding the economic deterrents, he said they were concerned that employer sanctions would discourage employers from hiring minority workers who look foreign and that using a secure ID system to minimize that risk could affect the civil liberties of all Americans. He acknowledged that the Simpson-Mazzoli bill tried to be sensitive to these dangers, but

noted that there is still a need for safeguards to prevent employment discrimination. He said ACLU recommended developing a "mix of alternative methods of controlling immigration, including stepped-up enforcement of the existing wage and working standards laws as recommended by the Select Commission and stepped-up border enforcement as recommended by both the Commission and the Simpson-Mazzoli bill." With regard to asylum, he noted the increase in the number of persons claiming political asylum in the U.S. in recent years and the growing consensus that existing asylum procedures are "inadequate and unfair." He said ACLU endorses some of the asylum provisions in the Simpson-Mazzoli bill, but that they also feel it has drawbacks, including the virtual elimination of judicial review, the summary exclusion provisions, and the need not addressed in the legislation for revising the role of the Department of State.

Questions: Rep. Mazzoli asked whether the witnesses felt the bill was good and whether they could live with it and they indicated that although they had some problems with various parts, they felt it was a good product. Rep. Mazzoli noted their contributions and suggestions from past testimony that have been incorporated in the bill.

In response to questions from Rep. Mazzoli, Bishop Bevilacqua said he commended the provisions in the bill that require documentation from all persons seeking employment, but said that he still believes discrimination would result. Both he and Mr. Shattuck noted that current employment discrimination laws and fair labor standards laws are not adequately enforced and stressed their importance and the importance of increasing the appropriations for such enforcement as well as appropriations for the verification system in the Simpson-Mazzoli bill.

In response to questions from Sen. Simpson regarding whether those who have been in the U.S. less than two years shouldn't have to earn permanent resident status, Bishop Bevilacqua said the church doesn't favor illegality but that the reality is that the illegals are human beings and they are here. He added that a small percentage of the eligible have registered for legalized status in similar programs in other countries and that if the U.S. program is not as comprehensive as possible and doesn't allelviate the aliens' fears that by giving their names for a temporary status, they will be deported, the program won't work. Sen. Simpson responded that there wasn't a guarantee that anyone at any stage of the game would become an American citizen because they have to meet all kinds of criteria. He pointed out that as temporary residents under the Simpson-Mazzoli bill, the alien could travel, work, join labor unions, and so on.

Rep. McClory expressed his support of the legislation and said he believed the bill addresses the primary inducement for illegal entries, employment. He said that many who came here illegally to work want to stay and that the bill would allow that while at the same time it would provide means to regain control of our borders. He said he believed the bill aids minorities.

Rep. Fish noted that the alternative offered by Bishop Bevilacqua regarding family reunification would not resolve the backlogs in many countries. He asked for reactions to creating an Immigration Advisory Council with the power to recommend changes in immigration admissions levels. Bishop Bevilacqua responded that he would favor such a suggestion if the principles of family reunification were part of the structure; Mr. Conner said he favored the periodic reevaluation of legal admissions numbers.

Sen. Simpson asked Mr. Shattuck for specific examples of the abuse that could occur from a new verification system using an upgraded or revised social security card. Mr. Shattuck noted possible searches of citizens to determine whether they are carrying the card; searches of places where it is suspected illegal aliens are employed; and possible disclosure of personal information about persons carrying cards from the data base, if the data base was expanded. He indicated that dozens of examples of personal intrusion after expansion of existing data bases were included in their earlier testimony (Oct. 1981). Mr. Conner noted that the Simpson-Mazzoli bill had stronger protections against misuse of the social security number and card than exist in current law and Mr. Shattuck countered that the Privacy Act of 1974 currently prohibits the use of social security cards for purposes other than determining eligibility for social security unless Congress so authorizes.

Rep. Mazzoli asked for suggestions in writing that would be germane to the bill regarding employee discrimination. Mr. Shattuck urged that the need for enforcement of existing fair labor standards law be included in the bill.

E. Panel

1. Tony Bonilla, National President, League of United Latin American Citizens;
2. Antonia Hernandez, Associate Counsel, Mexican American Legal Defense and Education Fund;
3. Raul Yzaguirre, President, National Council of La Raza;
4. Jose Cano, National Chairman, GI Forum of the United States.

Statements

1. Mr. Bonilla noted that we are in an era of mass hysteria regarding undocumented workers in this country. He indicated LULAC's opposition to the employer sanctions and ID verification system provisions of the Simpson-Mazzoli bill. He said that these provisions would make it easier for employers to refuse to hire anyone who looks Hispanic and that EEOC statistics show that Hispanics have already been the victims of discrimination. He said that LULAC also thinks the proposed employer sanctions conflict with the Administration's attitude that Government should be taken out of the workplace. He noted that it would take a "massive bureaucracy" and substantial funding to implement employer sanctions. He indicated that LULAC believes that INS enforcement functions are overemphasized while their service functions are underemphasized in the Simpson-Mazzoli bill; likewise, he indicated that the bill fails to safeguard the civil rights of the undocumented even though INS has engaged in selective [illegible]rcement in the past. He noted that LULAC supports the H-2 provisions but does not favor a temporary guest-worker program; that they believe the $10 million for the identification system should be used to develop training programs and to relocate displaced workers to meet labor

shortages; that the date for permanent resident status in the legalization program should be changed to Jan. 1, 1980, and that provision should be made for those who entered between Jan. 1, 1980, and the date of enactment to also qualify for legal status "after meeting some other criteria"; that there should be some provision to expedite the right and opportunity of those legalized to acquire citizenship; and that there should be some provision for assistance for those who are waiting to acquire legal status if they "fall upon hardship."

2. Ms. Hernandez noted that MALDEF's "basic concern with U.S. immigration policy is that it often has serious rights consequences for the U.S. Hispanic population" because this population is often indistinguishable from the undocumented. She noted MALDEF's concerns with specific provisions of the Simpson-Mazzoli bill. (1) In the area of legalization, she noted concern with the 1980 cutoff date for termporary resident status which "excludes a large class of aliens" who entered after that date or cannot prove otherwise and suggested that the cutoff date for permanent resident status should be 1980 and for temporary resident status it should be the date of enactment. She noted that the legalization program also leaves questions of family unity unanswered and that MALDEF objects to the provision that would make knowledge of English a condition for permanent residency because it is inconsistent with current law and creates a double standard. (2) In the area of employer sanctions, Ms. Hernandez indicated that MALDEF believes that this program does not address many of the causes of international migration and said that their specific objections to employer sanctions were outlined in her written testimony. (3) She noted other areas of concern, including the proposed numerical limits and preference categories, the H-2 program, and the asylum and adjudication procedures, and indicated that these were addressed in her written testimony.

3. Mr. Yzaguirre praised the bill as "probably the best framework for a comprehensive immigration policy that has come before the Congress in a very long time. * * *" He indicated that his organization's concerns with the legalization section were similar to those expressed by Ms. Hernandez. He added that they hoped the voluntary agencies would be used as intermediaries to encourage participation in the legalization program. He emphasized their concern, shared by MALDEF, that streamlining the H-2 program would not result in a "backdoor" guest-worker program. He emphasized their concern about employer sanctions and the possible resultant discrimination against Hispanic Americans. He noted that their concerns with the legislation included a belief that the section that directs the President to develop and implement a worker eligibility verification system is ambiguous; that the legislation doesn't address other means for reducing incentives for undocumented people to come to the U.S.; and that the legislation should include a "Sense of the Congress" regarding enforcement of existing labor laws. He also noted their concern about the summary exclusion provision in the proposed legislation. He made several recommendations addressing these concerns.

4. Mr. Cano noted that a major concern of his organization is the proposed legalization program, including a concern over what

would be the fate of those undocumented persons who entered the U.S. since 1980 and are not covered in the bill. He reiterated the earlier recommendation that voluntary agencies be used to provide initial outreach in the adjustment process and suggested that training programs would help "elevate the socioeconomic status of those disadvantaged 'New Americans' that the bill will legalize." He noted that another major concern of the American GI Forum is the proposed employer sanctions and reiterated suggestions made by earlier speakers concerning enforcement of existing labor laws and the need to address economic conditions in other countries "that produce the illegal immigration."

Questions: Rep. Mazzoli noted that although the immigration subcommittee does not have control over labor laws and international economic matters, he believes that the immigration problem could not be solved in any one simple way and that he would continue to work for more comprehensive treatment. He said the INS Efficiency Act had helped INS by increasing its authorizations and positions.

In response to questions from Rep. Mazzoli, Mr. Bonilla said his organization believes that under the legislation as proposed, employers will not hire anyone foreign looking so that they don't have to face the inconvenience of the paperwork and screening. He said that if existing labor laws were enforced, there would be no need for employer sanctions or the ID card.

In response to questions from Sen Simpson, Mr. Cano and Mr. Yzaguirre indicated their support for a legalization program, but emphasized their concerns that employer sanctions would lead to discrimination and that the sanctions did not address the causes of illegal migration. Mr. Yzaguirre urged that committee jurisdictional problems be worked out so that the immigration problem could be addressed comprehensively. He noted that the illegal migration is also a problem for sending countries which lose some of their "best qualified people." Sen. Simpson agreed that the sending countries are losing highly trained people.

In response to questions from Sen. Simpson, Mr. Bonilla clarified that their concern with employers sanctions was that an employer would be "afraid of the bureaucracy that is going to be looking over his shoulder in the operation and conduct of his business." He said that employers will more likely ask Hispanics and other foreign-looking people for ID than those who look American. He also noted that this provision puts the burden on the employer to enforce immigration laws. Sen Simpson pointed out that under the employer sanctions provisions, the employer who doesn't ask everyone for ID is subject to a fine. Mr. Cano stressed that there is already discrimination against the foreign-looking and that employer sanctions would probably increase that. Mr. Bonilla asked whether a study had been made of the cost of a fool-proof ID card and the cost for the work force to ensure compliance with employer sanctions. Rep. Mazzoli noted that the cost hasn't been absolutely quantified, but that the current cost to society of being able to employ undocumented workers in lost jobs, underground society, and exploitation of people had be be considered. Sen. Simpson added that enforcement would have to be done by selective audits, such as those used by IRS. He indicated that most people follow the law.

Sen. Simpson also noted that cost estimates have been made regarding revising the social security card.

Rep. McClory noted the respect in which Hispanics are held. He said that in the Select Commission's Chicago hearings there was no evidence that Hispanics were being paid less than minimum wage and asked Mr. Bonilla for documentation of the violatioins of the Fair Labor Standard Law.

There was discussion of the English-language requirements in the legalization section of the Simpson-Mazzoli bill and Rep. Mazzoli clarified that this requirement applied only to those who came between 1978–80 and were seeking temporary resident status. He emphasized that the requirement was that they be in a program that would lead to English language competency.

Rep. Fish asked Ms. Hernandez to expand on MALDEF's views on numerical limits and the preference allocation system. Ms. Hernandez said that MALDEF objects to the inclusion of immediate family members under the ceiling and to the "set-aside of 100,000 for the independent category" as these would minimize the numbers available to the other preference categories. She said that together the current labor categories—3rd and 6th preference—are allowed 54,000 entries annually; that the current backlog in 6th preference is for unskilled rather than skilled workers; and that there is thus no reason to increase this allotment [54,000] to 100,0000 under the new independent category, particularly as it decreases the numbers available for reunification of family units. She said that MALDEF supports a special allocation of visas to clear up the backlog of applicants, particularly in the 2d and 5th preference categories, as recommended by the Select Commission. In response to questions from Rep. Fish, Ms. Hernandez indicated that she didn't support the provision in the bill that charges numerically exempt immigrants in excess of 20,000 to a country's per-country ceiling for the following year.

Ms. Hernandez, Mr. Bonilla and Mr. Yzaguirre expressed support for a proposal from Rep. Fish regarding establishing a mechanism for periodic review and recommendations for revising the immigration admissions levels.

F. Panel

1. Althea Simmons, Director, Washington Bureau, National Association for the Advancement of Colored People;
2. Norman Lau Kee, Chairman, Immigration and Refugee Policy Task Force, United States-Asia Institute;
3. Hyman Bookbinder, Washington Representative, American Jewish Committee, Accompanied by Gary Rubin.

Statements

1. Ms. Simmons commended the subcommittees on the comprehensive and bipartisan approach reflected in the Simpson-Mazzoli bill. She said that although the NAACP doesn't like to think in terms of a cap on immigration, they believe we must realistically recognize we are running out of resources. She said they believe we must also recognize that our immigration policy has been discriminatory. She noted that the Haitians have been labeled economic rather than political refugees yet would face reprisal if returned to

their country. She suggested the subcommittees address this issue and help ensure there is no racial discrimination in determining admissions. She also suggested that those persons officially resettled by resettlement agencies should have an opportunity to regularize their status in the U.S. She indicated NAACP's long-standing support of employer sanctions and noted the negative effect undocumented workers have on the employment situation of "unskilled, unemployed, and marginally employed Blacks." She said that as long as there is unemployment in this country, there is no need for a guest worker program. She said NAACP supports the enactment of a legalization program and that some consideration should be given to having it cover all those undocumented persons in the U.S. on the date of enactment. Finally, she noted their support for the creation of an Immigration Board—an independent entity—and streamlined asylum procedures. She pointed out, however, that they have "serious difficulty with the lack of judicial review" and that they believe "summary exclusion strikes the heart of our democratic system."

2. Mr. Kee congratulated the subcommittees for proposing a "very generous legalization program." He indicated that his organization found the employer sanctions section acceptable "in concept" and said that their major concern with the bill was in the area of family reunification preference categories. He said that the allocations under the proposed legislation would tend to cause family separation rather than reunification and noted that: (1) There is not a backlog in the current 2d preference category which includes sons and daughters over age 21 (except for Mexico, which would get a special allocation under the bill) and (2) The backlog in the current 5th preference, which includes brothers and sisters, is similar to that in 6th preference—a labor preference category. He noted that including unmarried adult children as part of the nuclear family is an American concept, as illustrated by unmarried children over 21 in America still attending college and dependent upon the family for education and maintenance. He noted that concern about the economic and moral well-being of siblings for one another is a factor likely to lead to their being economically self-supporting rather than on the welfare rolls. He said family units tend to form strong economic units and that historically the brother-sister relationship has been the basis of favorable treatment. Finally, he indicated that his organization favors removing the cap on immigration because as the immediate relative category grows, the preference category numbers will be reduced.

3. Mr. Bookbinder spent a few minutes on philosophical background to mark "the culmination of an activity in Congress which is truly historic." He noted that we can take pride that "we have an immigration problem because so many desperate, suppressed, miserable people around the world want to be Americans." He said that he wished we could let everybody enter the U.S. but indicated that realistically we can't do that. He said that, instead, immigration policy must, as this bill comes close to doing, balance compassion and openness with reasonable and realistic rules. He said that his organization has a few reservations about the bill: (1) They don't support bringing immediate relatives under the cap; (2) They oppose eliminating the current 5th preference category; (3) They

support the proposed creation of a new Immigration Board and the appointment of administrative law judges to hear asylum cases, but are disturbed by the provision for summary exclusion; (4) They propose a secure, universal ID system if there is an employers sanctions program; and (5) They urge that the eligible date for entry into the U.S. for legalized status under the legalization program be as close to enactment as possible.

Questions: Rep. Mazzoli noted for the record that the Simpson-Mazzoli bill would legalize Haitians who entered the U.S. prior to Oct. 10, 1980, and that the asylum process proposed in the bill is an improvement over the current process. In response to questions from Rep. Mazzoli, Ms. Simmons indicated that she thinks that overall the bill is workable although she has reservations about the Oct. 1980 cutoff date for the Cubans/Haitians because many Haitians have entered since that time. Rep. Mazzoli noted that INS has advised him that recently of 132 Haitians released into the community, 101 failed to show up for their asylum hearings. He asked Ms. Simmons what suggestions she would have for sponsorship programs and she indicated she would address this in writing.

Sen. Simpson addressed the question of 5th preference, stressing that although deciding to eliminate that category had been painful, they believed it reflected the definition of nuclear family most acceptable to U.S. citizens. Mr. Kee responded that he believed people who entered under this category would be more accountable because of their having a brother or sister here. He indicated that entries under 3d preference—skills and exceptional ability—typically are people who apply from within the U.S. where they have come on a nonimmigrant visa to check things out.

In response to questions from Sen. Simpson, Mr. Bookbinder indicated that he thinks the immediate family admissions numbers have been slowing in recent years. Sen. Simpson stated that he believed there was about a 7–8 percent annual increase, but he added that the numbers will probably grow after those who are legalized gain citizenship. Mr. Bookbinder noted that under the proposed system, there is little left for the family-reunification preference categories.

In response to questions from Rep. Fish, Mr. Bookbinder indicated that a cap of 350,000 exclusive of immediate relatives seemed appropriate and both he and Mr. Kee indicated that differentiating between unmarried and married brothers and sisters would make limiting 5th preference admissions more acceptable. Mr. Kee said that the proposed elimination of unmarried sons and daughters from the 2d preference category was another example of family separation. In response to questions from Rep. Fish regarding use of a mechanism to raise or lower the immigration cap in future years, Mr. Bookbinder, Mr. Kee and Ms. Simmons recommended that the mechanism include a role for Congress.

XVI. APRIL 20, 1982, "IMMIGRATION REFORM AND CONTROL ACT OF 1982"

Joint Hearing before the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee, and the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee.

Senator Alan Simpson (chairman of the Senate subcommittee), presiding.

Present: Senators Simpson and DeConcini; Representatives Mazzoli, Fish, Hall, and McCollum.

A. Opening statements of the subcommittee chairmen

Senator Alan Simpson noted the two subcommittees' determination to send to the floor legislation that was substantively sound and politically realistic, as exemplified by the joint hearing process. He said that in addition to their joint and numerous separate hearings, they had had access to the excellent work on immigration reform of the Ford, Carter, and Reagan administrations, the Select Commission on Immigration and Refugee Policy, and the proposals of Senator Huddleston. Not surprisingly, these proposals and recommendations were quite similar, since all were dealing thoughtfully with the problem of bringing immigration to the United States back under control. That, he said, was the purpose of the bill, S. 2222 and H.R. 5872, that he and Congressman Mazzoli had introduced. He and Representative Mazzoli both noted that the bill was not perfect, that it was subject to amendment, but Representative Mazzoli stressed that it had been put together with care and sensitivity, for which he particularly complimented Sen. Simpson. Rep. Mazzoli also commented on the favorable notice the bill had been receiving from the major newspapers, which had commented on its equity, balance, and humanity.

B. Attorney General William French Smith, U.S. Department of Justice

Statement

The Attorney General characterized the Simpson-Mazzoli bill as "a rational and comprehensive set of reforms in the finest bipartisan tradition of the U.S. Congress," and said that "together with the administration proposals, this legislation may represent the last real hope of correcting the inadequacy of current law." He indicated the Administration's strong commitment to enacting legislation and presented its response to the chairmen's bill.

The Attorney General said that both the Administration and the Simpson-Mazzoli bill recognized the basic immigration problem as being illegal entry into the United States, with employer sanctions as the only remaining credible solution. However, he indicated that the Administration believed that employer sanctions should exclude the smallest employers, that criminal fines and prison terms should be imposed only where an injunction against repeated offenses had been violated, that the prohibition against hiring illegals should not be expanded to bar recruiting and referral, and that employers should not be penalized for failure to follow the verification procedure. He reiterated the Administration's opposition to the creation of a national identity card or process and suggested that, since the efficacy of relying on existing identification was unknown, the Administration should be instructed to study it and report on the need for improvements three years after enactment.

Regarding legalization, the Attorney General recommended one cut-off date, January 1, 1981, with at least eight years continuous residence required for adjustment to permanent resident status. He said that such an approach would reduce the residual illegal population while simultaneously not encouraging further illegal immigration or incurring enormous costs.

The Attorney General commented on the special labor needs in some sectors, particularly agriculture in the West and Southwest, that were expected to result from employer sanctions. He indicated the Administration's willingness to accept the distinct H-2 program for agriculture proposed in the chairmen's bill as a substitute for its proposed experimental temporary worker program, indicating further modifications would be suggested to increase executive branch flexibility.

Attorney General Smith commented on what he saw as "a serious need to provide the President with special legal authorities in the event of a declared immigration emergency," and indicated the Administration's willingness to work closely with the Congress to develop them. The Simpson-Mazzoli bill differed from the Administration bill in not including provisions for immigration emergencies.

Regarding adjudication procedures, the Attorney General indicated he had major concerns about those proposed in S. 2222/H.R. 5872. He opposed the proposal to make the Board of Immigration Appeals entirely independent within the Department of Justice, as well as the proposal that asylum determinations be made by administrative law judges rather than special INS asylum officers.

Attorney General Smith indicated the Administration's conclusions that the existing law regarding legal immigration was "basically rational and fair, and that changes in the preference system bear little relation to the urgent problems of illegal immigration and mass asylum." He indicated reservations about placing immediate relatives under an overall cap; he argued for greater flexibility than the proposed preference system provided; and he suggested increasing the worldwide ceiling by 40,000 to accommodate the increase in Mexican and Canadian immigration, as under the Administration bill.

Questions: Sen. Simpson noted the objections of some business groups to employer sanctions and asked the Attorney General what he viewed as possible alternatives. The Attorney General replied that he thought such opposition was based on a misunderstanding of employer sanctions, that employers would have an absolute defense against liability if they examined the requisite identifiers and signed a statement. He said employer sanctions were the only credible enforcement tool, and that it would be an impossible job to control illegal immigration through strengthening the Border Patrol alone. Sen. Simpson said that the alternatives to employer sanctions would be increased enforcement in the form of sweeps and other intrusions in the workplace.

In related subsequent questioning, Rep. Sam Hall asked if a great deal of the traffic between Mexico and the United States couldn't be stopped by beefing up the Border Patrol, without the necessity for employer sanctions. Again, Mr. Smith expressed the opinion that there was no way of sealing the border unless we were willing to go on almost a war footing; he also questioned the "willingness to spend the amount of money that would have to be spent" for such a force. In response to a question from Sen. DeConcini, Mr. Smith indicated that the Administration would support increased border enforcement in the event that S. 2222 or similar legislation was passed, but they did not believe that increased enforcement alone would solve the problem.

In response to a question from Rep. Mazzoli about limiting employer sanctions to those who employed four or more, Mr. Smith said "50 percent of the employers would fall into that category, but only 5 percent of the employees." Mr. Mazzoli questioned the fairness of such an approach, noting that some of the worst cases of exploitation had occurred in one-on-one situations. They also discussed the Administration's recommendation against penalties for failure to comply with the verification requirements. Mr. Smith said they did not see how this addressed the problem of hiring illegal aliens, and Mr. Mazzoli replied that its purpose was to protect against discrimination.

Rep. Bill McCollum argued in favor of an Article I court to handle immigration matters, and questioned whether the Simpson-Mazzoli bill provided the kind of streamlined mechanism necessary in his view to avoid obstructionist tactics. Mr. Smith said they definitely opposed setting up "another independent court system." He said that the most important thing for the Congress to do was to streamline the administrative and judicial procedures available, and that he believed the procedures proposed in the Administration bill were simpler than those proposed in the chairmen's bill. He argued against an independent and unaccountable Board of Immigration Appeals, but indicated that they agreed that immigration judges should be taken out of INS and put under the Board.

C. Congressional panel

1. Hon. Walter D. Huddleston, U.S. Senator from the State of Kentucky;
2. Hon. Baltasar Corrada, Resident Commissioner in Congress from Puerto Rico;
3. Hon. James D. Santini, Representative in Congress from the State of Nevada;
4. Hon. Shirley Chisholm, Representative in Congress from the State of New York.

Statements

1. Sen. Walter Huddleston said he had accepted the opportunity to cosponsor S. 2222 because he believed it was similar in many respects to his S. 776, and be believed the time was propitious for passing immigration controls before the subject became too highly politicized. He focused his comments on what he saw to be a substantial weakness in the Simpson-Mazzoli bill: "the failure to establish a comprehensive, all-inclusive immigration ceiling in the United States," including both immigrants and refugees.

Sen. Huddleston was critical of the Refugee Act of 1980 as creating a vague, open-ended admissions process in which the proposed 50,000 guideline had become a floor instead of an average. He noted that the yearly average since the bill had been enacted was 177,000. He also said that the consultation process was not adequate for assuring congressional control over the refugee admissions policy because it had no teeth and was subject to the uncertainties of fate.

Sen. Huddleston charged that the Refugee Act had failed in its goal of assuring that all refugees were treated alike. He also noted that refugee status was a "privileged status," providing benefits not available to U.S. citizens, and that it was being abused. At a time when draconian cuts were being made in domestic assistance programs, costs were not being cut in the refugee program, or they were being shifted to State and local governments.

Sen. Huddleston commented on the economic and political pressures which contributed to the flow of refugees and economic migrants. He noted that while the flow may be slowing from Indochina—and he was very critical of the State Department for recruiting economic migrants from Indochina—it was likely to increase from the Caribbean Basin. He said that if we bring illegal immigration under control through employer sanctions and place a partial ceiling on legal immigration, the pressures to enter under the open-ended refugee provisions would significantly increase.

2. Del. Baltasar Corrada noted the conflict between two traditional principles of this nation: our comparatively open door immigration policy, and our compassion for U.S. citizens and communities suffering unusual economic hardship. He cited the high unemployment rate, particularly in Puerto Rico, and said that large numbers of immigrants could no longer be properly assimilated and were worsening the plight of U.S. citizens, although at the same time he applauded our humane immigration policy.

Del. Corrada commended the Simpson-Mazzoli bill for retaining a reasonable open door policy while minimizing the adverse affect of such a policy by providing realistic reforms. He noted his own bill, H.R. 4864, which would encourage the settlement of immigrants and refugees in areas better able to receive them, revise the labor certification provision along the lines of Simpson-Mazzoli, and reinforce the labor market orientation of the nonfamily portion of immigration. He also commented on the need for encouraging the economic development of the major sending countries.

3. Rep. James Santini testified in his capacity as chairman of the House Tourism and Travel Caucus. He focused his comments on the visa waiver provision of the Simpson-Mazzoli bill, noting that while there was much they supported about section 213, they also advocated some modifications. He proposed increasing the refusal/fraud rate from 1.5 to 2 percent, so that the major Western European countries would be included; expanding the reciprocity rule to include those countries prepared in the future to extend such treatment to U.S. citizens; and lifting the five-country restriction on the program. He also proposed that the visa waiver be addressed in separate legislation, apart from the highly complex issues of the Simpson-Mazzoli bill.

4. Rep. Shirley Chisholm testified as the chair of the Congressional Black Caucus Task Force on Refugees. While generally commending the Simpson-Mazzoli bill as an important step forward, she noted their reservations. She expressed concern about "the po-

tential discriminatory impact inherent in the employer sanctions proposal," saying that without the necessary funds to monitor abuses, she believed that it would inevitably cause employment discrimination against people who look foreign. She noted that the legalization provisions were a vast improvement over the President's proposals, indicating that they would also prefer broader dates regarding Haitian eligibility for legalization.

Rep. Chisholm focused her comments on the adjudications procedures and asylum, Part C of the bill, stating in summary that she believed "that certain fundamental due process principles are violated by the bill," although she believed it was a vast improvement over the Administration bill. She made four major points. First, she believed that the summary exclusion proceedings were open to abuse by INS officials, particularly since people were required to claim asylum within 14 days of their arrival. She said that asylum seekers may be hesitant about immediately admitting persecution, and that the summary exclusion provision "only serves to enhance our geopolitical policy of denying asylum to those fleeing persecution from our allies in the Western Hemisphere."

Second, she said that they opposed the elimination of judicial review of asylum claims, and did not believe that the administrative law judge system was a substitute for judicial review. Third, she noted that her own bill, H.R. 6071, addressed the above concerns and also created a National Advisory Council on Asylum and Refugee Policy to train asylum officers and collect information on asylum situations, enhancing independence in both areas. Finally, she observed that the Congressional Black Caucus would "continue to oppose discrimination against those who are only separated from us by their arrival in the Americas in different boats at different times," and rejected suggestions that they should worry more about the economic plight of black Americans.

Questions: Questions were limited to two observations by the chairmen. Sen. Simpson informed Rep. Chisholm that persons were not required to claim asylum 14 days after arrival, but 14 days after receiving notice of deportation or exclusion hearings. Rep. Mazzoli commended Sen. Huddleston on his remarks, and indicated that he shared his concern about the viability of the refugee consultation process.

D. Administration panel

1. Malcolm Lovell, Jr., Under Secretary of Labor, U.S. Department of Labor;
2. Alan C. Nelson, Commissioner, Immigration and Naturalization Service, U.S. Department of Justice;
3. Diego C. Asencio, Assistant Secretary for Consular Affairs, Department of State;
4. A. James Barnes, General Counsel, U.S. Department of Agriculture.

Statements

1. Under Secretary of Labor Malcolm Lovell stated that employer sanctions were the cornerstone of both the Simpson-Mazzoli and the Administration bills, and that the Labor Department strongly favored them. He believed that they were a critical step toward im-

proving the employment opportunities for the low-skilled, who were at once the most vulnerable workers and those with whom undocumented aliens most often compete. He denied that illegal aliens were most often employed in jobs Americans would not take, noting that in 1981 close to 30 percent of all workers, or 29 million, were in the low-skilled industrial, service or farm jobs in which illegals typically find employment. Statistics also showed that approximately 10.5 million U.S. workers were employed at or below the minimum wage and another 10 million were earning within 35¢ of that level. At the same time, the unemployment rates of low-skilled workers have been exceptionally high in recent years.

Mr. Lovell concurred with the Attorney General regarding proposed modifications in the employer sanctions provisions, noting also that the Labor Department proposed that they be included as an agency authorized to inspect the proposed employer-employee form. He indicated their willingness to accept the proposed H-2 program with amendments they were suggesting, noting that the Simpson-Mazzoli H-2 proposal "aims at a reasonable balance between the interests of U.S. workers and the needs of agricultural employers." He also said that they would recommend only minor modifications in the proposed labor certification revisions.

2. INS Commissioner Alan Nelson observed that the submission of the Simpson-Mazzoli bill brought the Administration and the Congress closer to their mutual goal of prompt passage of immigration law reform. He noted that they agreed on the basic principles: the need for control over who enters the country, for employer sanctions, for an effective legalization program, and for a streamlined hearing process. He said that they interpreted the differences between the Administration and Simpson-Mazzoli bills "as relatively minor," and subject to negotiation.

The differences enumerated by Mr. Nelson were essentially the same as those noted previously by Attorney General Smith relating to employer sanctions, worker identification, legalization, and exclusion and asylum procedures. For example, Mr. Nelson stressed that they favored the "existing documentation approach" toward worker identification in connection with employer sanctions, at least until they found out how it worked. Regarding legalization, he specifically recommended that benefits should not be granted those in temporary resident status.

2. Assistant Secretary for Consular Affairs Diego Asencio stated that the close parallels between the Simpson-Mazzoli and the Administration bills in their conceptual framework of strategies to control the borders were of greater importance than the fact that the bills differed in some particulars. He expressed pleasure on their agreement on "the need for measures to regularize the status of some of those in the United States illegally, to reduce the pull factors that induce such illegality, and to expedite administrative procedures relating to admission, exclusion, and deportation."

Commenting on provisions which were of particular interest to the State Department, Mr. Asencio supported the increased ceilings for Mexico and Canada, but with an increased total ceiling He noted their reservations about an overall cap on immigration on the grounds that it would develop an unhealthy tension between U.S. citizens and immigrants who want their close relatives to join them. He indicated reservations on foreign relations grounds about the proposed changes in second and fifth preference, noting they would be viewed as discriminatory. He regretted the omission of a consultative role for the State Department in the asylum adjudication process. He questioned the practicality of a return to the maintenance of status requirement for adjustment of status. Regarding the proposed visa waiver, Mr. Asenci endorsed the earlier comments of Rep. Santini, particularly regarding the change in the eligibility criteria which would allow most of Western Europe to participate.

4. USDA General Counsel James Barnes expressed his appreciation for the special attention paid to the agricultural sector and the possibility of some dislocation in the West and Southwest during the implementation of the immigration control program. He indicated their support for the proposed use of the H-2 program as a safety valve, with a number of modifications which he detailed specifically. He recommended that the Secretary of Labor should have the discretion to focus the search for U.S. workers on areas where they had been found in the past or were likely to be found; he believed that the Attorney General should continue to have a role in the certification process, and that the Secretary of Labor's views should be advisory only; he endorsed the concept of a user fee, but not for the policing costs; he suggested the inclusion of a notice and hearing process and a one-year exclusion from participation in the H-2 program for employers who had violated critical terms of past H-2 certification; he suggested clarification of what happens regarding H-2 workers in the event of a labor dispute; he suggested some change in the procedure for dealing with a situation where U.S. workers do not show up or prove to be unqualified, indicating a preference for requiring an expedited decision by the Secretary of Labor rather than setting a fixed time requirement; he suggested broadening the provision for allowing employer associations to seek certification beyond those representing a single crop or livestock; and he recommended that the Secretary of Agriculture be included in the development of regulations.

Questions: Rep. Mazzoli questioned Mr. Lovell about the displacement of U.S. workers by undocumented workers, noting that an official of a previous administration had suggested it might be as high as 50 percent. Mr. Lovell was unwilling to specify a percentage, but he said displacement of a considerable magnitude did take place as the result of illegal immigration, and cited decreasing employment among teenage and adult black males since th mid-1950s. He also said that a statistic from a Houston survey showing that 40 percent of construction workers there were probably illegal sounded like a reasonable assumption, and noted that undocumented workers were by no means limited to lower-paying jobs.

Rep. McCollum questioned Mr. Lovell and Mr. Barnes about the adequacy of the H-2 program to meet the needs of apple orchard and citrus grove employers for workers in the event of employer sanctions. Mr. Lovell replied that some of the illegal workers they were presently using would be eligible for amnesty. He noted that they also expected the H-2 program to "substantially increase" under the new bill from its current size of 43,000 people a year.

Mr. Nelson was questioned extensively by Rep. Mazzoli about the Haitians then being detained in Florida. Mr. Nelson replied that detention was not limited to Haitians, that it was provided for by the statute, and that the best alternative was "an effective, fast, fair due process proceeding" such as the Administration and Simpson-Mazzoli bills would provide. He justified detention on the grounds of deterrence and the fact that the past record indicated a low rate of return by those not detained.

Rep. McCollum questioned Mr. Nelson on whether dilatory judicial delays would still be possible under the proposed revisions of the adjudications procedures. Mr. Nelson responded that delaying tactics were always possible, but that he believed most lawyers acted in good faith, and the proposed revisions would generally speed up the legal process while retaining the due process requirement.

E. Lane Kirkland, president, AFL-CIO

Statement

Mr. Kirkland stated that the Simpson-Mazzoli bill was generally consistent with the goals of the AFL-CIO, and that it could and should be passed before the Congress adjourns. He said that "the AFL-CIO supports an immigration policy that is compassionate and humane, a policy that fosters reunification of families, that offers haven to refugees from persecution, and also protects the jobs and labor standards for American workers."

He said that exploited illegal aliens posed a threat to minorities, women, and unemployed American citizens, and that the best way to stop illegal immigration was to cut off employment by means of employer sanctions. While he opposed a work permit as used in Europe, he said they recommended that employer sanctions be backed up by a secure forgery-proof identification system to be used only at the time of hiring. As safeguards, they recommended that the bill require that no eligible person be denied documentation required for work eligibility, and that no documentation issued according to law could be revoked. They also recommended determined enforcement of civil rights laws and equal employment opportunity requirements to protect against employer discrimination.

Mr. Kirkland stated that present border control and interior enforcement resources were inadequate, and recommended their increase to the point where INS could control immigration to the United States and protect American workers from unfair illegal foreign competition. He supported the proposed labor certification process, and commended the sponsors for rejecting a guestworker program. However, he stated "we do not like the H-2 program and we believe this bill should include specific steps to phase down reliance on H-2 workers."

Mr. Kirkland indicated AFL-CIO's support for legalization, although they did not believe it should begin until the flow of illegal aliens was stopped. He recommended permanent resident status for aliens with continuous residence in the U.S. prior to Jan. 1, 1980, and the participation of community-based organizations in the registration process. He indicated that they were not in favor of increasing present levels of legal immigration until the full effects of a decade of large-scale illegal immigration and refugee flow had been absorbed.

Questions: Sen. Simpson questioned Mr. Kirkland on his perception of the economic and psychological impact of the undocumented worker on the U.S. workforce. Mr. Kirkland replied that they perceived it as a pervasive national problem, particularly during a period of high unemployment, as opposed to the localized regional problem that it was in the past. He also commented on the fact that some of their affiliates included a considerable number of illegals among their members. He said that if the problem went unchecked, it could lead to social disruption because of the hostility it bred between exploited illegals and the disadvantaged minorities with whom they competed.

In response to questions from Sen. Simpson and Rep. Mazzoli, Mr. Kirkland indicated that he believed the bill's approach to avoiding employer discrimination in connection with employer sanctions was reasonable, and that the current system or nonsystem was far more discriminatory. Rep. Mazzoli asked what Mr. Kirkland would recommend as possible alternatives to employer sanctions for controlling illegal immigration. Mr. Kirkland replied that he didn't think there were any alternatives. He recounted his experience a few years ago as part of a labor-management group studying illegal immigration. Their initial dislike of employer sanctions coupled with an identity card had given way after detailed study to a unanimous joint conclusion that it was the only feasible approach.

F. Rev. Theodore M. Hesburgh, C.S.C., cochairman of the Citizens' Committee for Immigration Reform, and former chairman of the Select Commission on Immigration and Refugee Policy

Statement

Father Theodore Hesburgh stated that the Citizens' Committee for Immigration Reform wholeheartedly supported the Simpson-Mazzoli bill. He noted that the bill paralleled most of the recommendations of the Select Commission on Immigration and Refugee Policy, and that it recognized the need for controlling illegal immigration while at the same time permitting legal immigration at a reasonable level.

Father Hesburgh commended the inclusion of employer sanctions combined with a counterfeit-resistant nondiscriminatory means of worker identification, and the recognition of the necessity of additional funds for INS. He also expressed approval of the approach taken to asylum and adjudication procedures, and the omission of an interdiction program. He said that perhaps the most significant and controversial proposals were those relating to legalization, noting that legalization had been unanimously recommended by the Select Commission. He suggested that they use one date, January 1, 1980, instead of the two proposed in the bill.

Regarding legal immigration, Father Hesburgh indicated that they were in total agreement that refugee admissions should be outside any ceiling or cap on total numbers because of the need for flexibility. He suggested that the cap on total immigration be raised from 425,000 to 475,000, particularly in view of the increase in numbers for Mexico and Canada, noting that studies showed immigrants and refugees to be generally beneficial to the economy. He also suggested that the bill erred a bit on the side of restricting family reunification, although he indicated that on the whole he agreed with their assumptions. He suggested, as he did later during the questioning, that they might consider an immigration council or commission which could periodically adjust immigration numbers based on domestic and international conditions.

Questions: In response to a question from Sen. Simpson, Father Hesburgh said that he believed demagnetizing the magnet of employment opportunities by means of employer sanctions was the only way of controlling illegal immigration, and that employer sanctions had to be combined with a simple verifiable way of determining who was eligible for employment. He himself favored an upgraded social security card. He implied that the reason State employer sanction laws had not been enforced was because of the identification problem.

In response to a related question from Rep. Mazzoli, Father Hesburgh indicated that he did not think a universal identification system was per se discriminatory. In his opinion, the opposite was true; proper identification would protect all except those who were ineligible to work from discrimination.

In response to a question from Sen. Simpson about the allocation of numbers for legal immigration, Father Hesburgh said he believed that family reunification was "the No. 1 consideration in immigration." He expressed concern about the large backlogs, and concurred with the decision to eliminate future fifth preference and divert those numbers to second preference. He also stressed the importance of the independent category as a means of bringing in new cultures.

G. County government panel

1. Harvey Ruvin, Commissioner, Dade County, Fla.;
2. Deane Dana, Los Angeles County Board of Supervisors;
3. Peter Mackauf, Chairman, San Diego County Border Task Force.

Statements

1. Harvey Ruvin, a county commissioner of Dade County, Fla. and the chairman of the National Association of Counties' (NACo) task force on refugees, aliens, and migrants, testified on behalf of NACo. He indicated that they were "supportive of the basic thrust of the bill, which is to achieve greater control over immigration into the United States. However, we remain concerned that the act does not provide for full Federal financial responsibility for the costs and impacts of immigration policies on the State and local governments. We think that these should be borne at the Federal level."

In other specific points, Mr. Ruvin noted NACo's support for employer sanctions, and for the stronger penalties provided by the Simpson-Mazzoli bill, as compared to the Administration bill. However, they did not favor penalties for referral for employment. They strongly supported increased funds for border enforcement, and were pleased that the act did not provide for a new temporary worker program.

Mr. Ruvin indicated that he expected the bill's legalization provisions to be the most controversial. He said that while NACo supported legalization as a component of an immigration reform package, they conditioned their support on two factors: (1) the implementation of strong enforcement procedures, including employer sanctions, to curb future illegal immigration; and (2) Federal reimbursement of any additional State and local costs resulting from a legalization program.

2. Deane Dana stated that 1.1 million of Los Angeles' 8 million residents were undocumented aliens, and that the county board of supervisors, of which he was a member, unanimously backed passage of the Immigration Reform and Control Act. He said that the bill would have the effect of fully integrating the undocumented aliens present in the county into their society, while at the same time stemming the constant flow of illegal aliens through increased border control and employer sanctions.

Mr. Dana expressed the opinion that the legalization provisions would reduce county health expenditures for permanent resident aliens by making them eligible for Federally assisted health programs, and recommended that other health costs also be provided for in the bill. He said that the welfare provisions of the bill gave them more cause for concern, since the new permanent legal residents would be eligible for AFDC and other Federally assisted programs as well as general relief programs, which are totally county funded. He strongly urged that the bill be amended to include impact assistance for counties whose welfare costs would increase as a result of the legalization provisions.

3. Peter Mackauf testified on behalf of the board of supervisors of the county of San Diego. He said that San Diego had been in the mainstream of 20th century immigration issues from oriental immigrants at the turn of the century to the current interlocking relationship with Mexico; that San Diego's international border was the busiest in the world; and that he welcomed sharing San Diego's perspective, originating from a 16-member citizens' task force.

Mr. Mackauf made a series of specific recommendations regarding legalization, including changing the terminology to "registration", and providing eligibility for those who had entered two years prior to enactment and adjustment to permanent resident status after three years residence. He said they supported increasing the number of visas available to Mexico and Canada, and recommended shortening the current 10-year waiting period for Mexican second preference entry. He also recommended an experimental temporary worker program, indicating sympathy with the perception that it was more appropriate for agriculture than for other industries. Mr. Mackauf stated that "the county of San Diego is opposed to the provisions calling for employer sanctions," and believed that "existing laws, if properly enforced, can serve to discourage the hiring of undocumented workers."

Questions: Mr. Mazzoli questioned Mr. Mackauf closely on San Diego County's opposition to employer sanctions, and ascertained that the recommendation was not based on the particular formulation of the Simpson-Mazzoli bill. The Congressman suggested that they reopen consideration with specific reference to the bill in question, noting that the San Diego Chamber of Commerce supported employer sanctions despite the national Chamber of Commerce's opposition. In response to questions, Mr. Dana and Mr. Ruvin indicated that the Los Angeles County board of supervisors and NACo both supported employer sanctions. Mr. Mackauf indicated that the San Diego County supervisors had endorsed the recommendation against employer sanctions made by the 16-member citizens task force, based primarily on the concerns of Chicano and Latino groups that they would face discrimination. Sen. Simpson suggested that they faced greater discrimination without some kind of universal identifier coupled with employer sanctions.

H. Business panel

1. Russell Williams, President, Agricultural Productions, Los Angeles;
2. Austin Fragomen, American Council on International Personnel, New York;
3. Robert T. Thompson, Vice Chairman of the Board of Directors of the U.S. Chamber of Commerce, and Chairman, Labor Relations Board, Washington, D.C.;
4. James G. Van Maren, Director, Agricultural Department, California Chamber of Commerce;
5. Louie Welch, President, Houston Chamber of Commerce, Houston, Texas.

Statements

1. Russell Williams stated that the membership of the Agricultural Producers consisted of approximately 80 percent of the citrus and avacado industries of California and Arizona. He said that they believed that five elements were basic to a reform of U.S. immigration law: legalization, identification, sanctions, a temporary alien worker program, and administration.

Mr. Williams said they believed the Simpson-Mazzoli proposal was intended to comprehensively reform the country's immigration law, and to do so it should totally preempt all related State and local laws. He also noted that the Farm Labor Contractor Registration Act should be amended to exclude farm labor contractors from two sets of employer penalties.

Mr. Williams was highly critical of the proposed H-2 sections of the bill, saying that it required major modification in order to make temporary workers available, and constituted a fatal flaw in the existing legislation. He proposed a series of specific changes, including generally retaining the existing statutory authority for the program, defining "agriculture" and "agricultural labor" in the statute, and developing a more effective procedure for an expedited review of applications for certification.

2. Austin Fragomen stated that the American Council on International Personnel, of which he was chairman of the board, was "comprised of 150 major multinational corporations with a vital interest in facilitating the movement of international personnel across national boundaries." He said that the proposal before the committee effectively addressed their concerns in a number of respects, but in other areas the Council had alternate suggestions. He asked that they consider modifications of the labor certification provision to allow for individual certifications based on a particu-

larized offer of employment, in addition to the proposed use of national labor market data. He also emphasized the importance of adopting an "L" nonimmigrant visa program, similar to the "J" exchange visitor program, so that multinational corporations need not file individual petitions for intracompany transferees. Regarding employer sanctions, he said the large multinational corporations had no objection to them as long as they were imposed in a fair fashion and the regulations made it clear that they harmonized with the requirements placed on employers by the Equal Employment Opportunity Commission.

3. Ralph Thompson stated that the Chamber of Commerce was the largest federation of business and professional organizations in the world, and was the principal spokesman for the American business community. He said the Chamber commended the Subcommittee and the Reagan Administration for trying to come to grips with the difficult national issue of illegal immigration. However, the Chamber continued, after further study, to oppose employer sanctions and believed that section 101 of the bill should be struck in its entirety. While the Chamber did not condone the hiring of illegal aliens, they opposed the concept of placing the burden of enforcing immigration laws on the business community. Mr. Thompson expressed concern about the documentation issues, noting that the required documents could be easily obtained or forged, and that no guidelines were provided for the future identification system. He also noted that the bill appeared to cover virtually every U.S. employer, and questioned INS's ability to enforce employer sanctions effectively.

4. James Van Maren, the agricultural director of the California Chamber of Commerce, indicated that he would be speaking for and about agriculture, California's largest industry. He said his principal point was that "California agriculture must have an adequate labor force to survive." He said the bill's proposed employer sanctions would drastically reduce the number of undocumented workers available to agriculture, and they would not be compensated for by the proposed H-2 provisions. He said these provisions would substantially increase the regulatory power of the Department of Labor, which was primarily and legitimately concerned with protecting U.S. labor, and that this would make H-2 workers even less available to employers than they are now.

Mr. Van Maren indicated that the California Chamber of Commerce had "concluded sanctions against unlawful employment is part of the solution" to the illegal alien problem. However, their "major condition for accepting sanctions is this: Agricultural employers must be provided legitimate access to alien workers when and where they are needed." To accomplish this, Mr. Van Maren recommended retaining the H-2 provision as it is with one change, the addition of the Department of Agriculture in the consultation process along with the Department of Labor. He said this would accomplish the dual functions of the H-2 program, to provide alien labor when employers are in a bind, and to make sure American workers aren't harmed when such labor is provided.

5. Louie Welch, the former mayor of Houston, testified on behalf of the Houston Chamber of Commerce. He said that they recognized the magnitude of U.S. immigration problems, the inability of

present laws to adequately handle these problems, and the need for reform and proper financing. They supported the Immigration Reform and Control Act, with specific changes.

Regarding employer sanctions, Mr. Welch said they recognized them as a realistic means for discouraging the employment of illegal aliens. They supported sanctions, but "only if the employer is not forced to become a part of the enforcement process." He also said the proposed provisions should be amended to provide funds for educational purposes, and should be limited to employers of four or more as under the Administration proposal.

Other specific suggestions included increasing the number of visas for independent immigrants; eliminating the training requirement from the labor certification provision, and combining rather than substituting the proposed change regarding nationwide job market data with the existing provision; eliminating the two year foreign residence requirement for foreign students; and bringing existing backlogs for immigrant visas to current status and allowing nonimmigrants to adjust status in conjunction with the legalization program, in order not to punish those who have followed the law.

Questions: Both Rep. Mazzoli and Sen. Simpson questioned Mr. Thompson at some length about the continued opposition of the U.S. Chamber of Commerce to employer sanctions. Mr. Thompson indicated that speaking personally, and not for the Chamber, he would "not be opposed to putting a simple provision into the criminal laws which makes it criminal for an employer to employ illegal aliens," and that he was most concerned about the bureaucracy and regulations he foresaw resulting from the proposed provisions. He also questioned what he saw to be the omission of labor unions from the sanctions, and was assured that they were intended to be covered. Sen. Simpson suggested that the alternative to employer sanctions was going to be increased enforcement, more sweeps, and more intrusions and uncertainty in the workplace.

Sen. Simpson asked Mr. Williams whether he would prefer addressing the modifications in the H-2 program by regulation or statute. Mr. Williams replied that there was considerable debate in agriculture about that issue. He articulated the two points of view, and suggested a middle ground. He particularly concurred with Mr. Van Maren regarding the inclusion of the Department of Agriculture in the consultation process, noting that he had participated in developing the position of the California Chamber of Commerce. He recommended granting broader statutory authority to the Department of Agriculture, some change in the language regarding the expedited procedure and 80-day/20-day procedure plus some other changes, implying that the other modifications could be handled through regulations.

In response to a question from Sen. Simpson, Mr. Fragomen said he believed there were two conditions of primary concern in encouraging investors as independent immigrants. These were the amount, and he considered the proposed $250,000 reasonable; and the requirement that it encourage some employment and not be simply "a passive investment." However, he believed the prescribed employment of 10 in a poverty area to be unrealistically high and to ignore to potential mobility of labor to non-poverty areas.

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